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Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: May 21, at 9:00 am
WHERE: 26 Federal Plaza
Room 305 B and C
New York, NY
RESERVATIONS: Federal Information Center
1–800–347–1997

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6263 of April 29, 1991

Law Day, U.S.A., 1991

By the President of the United States of America

A Proclamation

On this Law Day, held in the 200th year of our Bill of Rights, we give thanks for our Nation's enduring legacy of liberty under law. This legacy, ensured by our Constitution and Bill of Rights, has made the name "America" virtually synonymous with freedom.

Ratified and adopted as part of the Constitution in December 1791, the Bill of Rights signalled our Founders' determination to uphold their earlier declaration "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." No other document in the history of mankind has enumerated in a more fruitful manner the fundamental liberties to which all people are heirs.

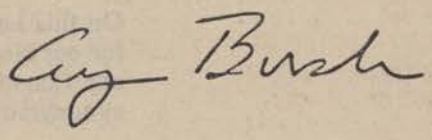
James Madison once noted that the idea of a Bill of Rights was valuable because "political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free government." Indeed, the principles enshrined in our Bill of Rights have proved to be not only the guiding tenets of American government, but also a model for the world. Two hundred years after this great document was adopted by the Congress, we can behold its seminal role in the advancement of human rights around the world. The United Nations General Assembly affirmed the ideals enshrined in our Bill of Rights when it adopted the Universal Declaration of Human Rights in 1948. Those ideals were also affirmed in the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe.

The ideals set forth in our Bill of Rights and echoed in each of these later documents have triumphed in nations that once bore the heavy yoke of totalitarianism. In emerging democracies around the world, courageous peoples are striving to bring the tender shoots of freedom into full bloom, and they continue to look to America as a guide. Today we know that our ancestors gave freedom not only a name but also a future when they adopted the Bill of Rights.

On this occasion we do well to honor all those Americans who labor and sacrifice to defend our Bill of Rights and the rule of law. Today we salute with special pride and appreciation our courageous military personnel. Yet, in addition to our Armed Forces, many other Americans work daily to uphold the rule of law; indeed, we owe great thanks to police officers, judges, attorneys, and all those who serve in our Nation's independent judiciary or who otherwise labor to defend our Constitution. Law Day celebrates the efforts of these individuals and reminds each of us of the importance of understanding our rights and meeting our responsibilities as citizens of a free Nation.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1991, as Law Day, U.S.A. I urge all Americans to observe this day by reflecting upon our rights and our responsibilities under the Constitution. I ask that members of the legal profession, civic associations, and the media, as well as educators, librarians, and government officials, promote the observance of this day through appropriate programs and activities. I also call upon all public officials to display the flag of the United States on all government buildings on this day.

IN WITNESS WHEREOF, I have hereunto set my hand this 29 day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91–10450
Filed 4–29–91; 2:51 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation on the political activity of the Federally employed residents of Frederick County, Maryland. The regulation grants these Federal employees a partial exemption from the political activity prohibitions of the Hatch Act, 5 U.S.C. 7324–7327.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jaime Ramon at (202) 606–1700 (FTS 266–1700).

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7324 *et seq.*, controls the political activity of Federal employees, employees of the United States Postal Service, and individuals employed by the District of Columbia. Section 7324 of 5 U.S.C. generally prohibits Federal employees from taking an active part in partisan political management and partisan political campaigns.

Section 7327 of 5 U.S.C., however, authorizes OPM to prescribe regulations permitting certain Federal employees to be politically active to the extent OPM considers it to be in their domestic interest. Under the authority of 5 U.S.C. 7327, OPM may allow Federal employees to participate in political campaigns involving the municipality or political subdivision in which they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality or political subdivision is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.123(b), OPM has designated municipalities and political subdivisions in which Federal employees may participate in local partisan elections. At 5 CFR 733.124(c), OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in, a local elective office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict or apparent conflict of interest.

On November 21, 1990, OPM published a proposed regulation (55 FR 48625) to grant the Federally employed residents of Frederick County, Maryland, a partial exemption from the Hatch Act. The comment period, which was 60 days from the date of publication, ended on January 22, 1991. In addition, OPM published the notice of proposed rulemaking in the December 5, 1990, edition of The Mt. Airy Courier-Gazette, and the December 6, 1990, edition of The Frederick News Post.

One individual submitted oral comments, supplemented with written comments, and three individuals submitted written comments. The comments are discussed below.

One comment included the suggestion that partial exemptions are a recent phenomenon and contrary to the Hatch Act. The Act, at 5 U.S.C. 7327, specifically authorized the former United States Civil Service Commission, and currently authorizes OPM, to issue regulations providing for such exemptions. The Civil Service Commission granted the first partial exemption to the Federally employed residents of Arlington County, Virginia, on September 9, 1940. Since then, partial exemptions have been issued to the Federally employed residents of 44 localities in Maryland and 13 localities in Virginia.

Two of the comments included questions concerning the specific criteria required for a partial exemption to issue to Frederick County, and the special or unusual circumstances leading to OPM's proposal to issue an exemption. OPM already has discussed these matters in its proposal to grant a partial exemption to Frederick County. Another question concerned the proximity of Frederick County to Washington, DC. OPM has concluded that while Frederick County does not share a common boundary with the District of Columbia, it is within reasonable commuting distance of that city. Moreover, partial exemptions have been granted to other localities in Maryland and Virginia which do not share a common boundary with the District of Columbia, but are within reasonable commuting distance of that city.

One comment questioned whether any problems might result from a partial exemption if Frederick County became a charter home rule county. The Federally employed residents of Anne Arundel, Howard, Prince George's, and Montgomery Counties already have been granted a partial exemption from the Hatch Act. All of these counties are charter home rule counties. MD. ANN. CODE art. 25A section 1A (Notes) (1990); MD. ANN. CODE [Constitution] art. XI–A sections 1–7 (1981).

One comment included a question about preventing Federal employees from announcing their affiliation with a partisan political party after successfully running for public office as independent candidates. Such conduct could cast doubts on the employee's status as a *bona fide* independent candidate in running for reelection, and might lead to an investigation for alleged violation of the Hatch Act.

Two comments included concerns that allowing Federal employees to run for and hold local public office would result in conflicts of interest. OPM's political activity regulations, at 5 CFR 733.124 (c) (1), specify that candidacy for, and service in, elective office shall not create a conflict, or apparent conflict, of interests with an individual's Federal employment. In addition, Federal employees are subject to the regulations

concerning employee responsibilities and conduct, at 5 CFR part 735. Federal employees who violate these regulations are subject to disciplinary proceedings.

One comment included the suggestion that the possibility for a conflict of interest would be greater in Frederick County because it includes several Federal installations within its borders. Other partially-exempt localities include Federal installations within their borders. Fairfax County, for example, includes Fort Belvoir. Montgomery County includes the National Naval Medical Center, National Institutes of Health, Uniformed Services University of the Health Sciences, and Food and Drug Administration.

Finally, two comments included concerns that Federal employees who participate in local election campaigns would coerce other Federal employees residing in Frederick County. The Hatch Act, at 5 U.S.C. 7324(a) (1), prohibits Federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. Moreover, it is a prohibited personnel practice under 5 U.S.C. 2301(b)(3) for a Federal employee to coerce the political activity of, or take any action against, another Federal employee or applicant for Federal employment for their refusal to engage in political activity. Federal employees violating sections 7324(a)(1) or 2301(b)(3) many be subject to disciplinary proceedings.

After reviewing the comments submitted in response to its notice of proposed rulemaking, OPM has concluded that there is no reason to reconsider its proposal to grant a partial exemption from the Hatch Act to the Federally employed residents of Frederick County, Maryland. Therefore, OPM is amending 5 CFR 733.124(b) by adding Frederick County to the list of designated Maryland municipalities and political subdivisions in which Federal Government employees may participate in connection with independent candidates in local elections. The addition of Frederick County is listed after Forest Heights and before Garrett Park, Maryland.

A copy of this notice will be published in local newspapers serving Frederick County.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because the change will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for part 733 continues to read as follows;

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR, 1978 Comp., P. 323; and E.O. 12107, 3 CFR, 1978 comp., p. 264.

2. Section 733.124(b) is amended by adding Frederick County, Maryland, alphabetically to the list of designated Maryland municipalities and political subdivisions as set forth below.

§ 733.124 Political management and political campaigning; exception of certain elections.

* * * * *

(b)

* * * * *

In Maryland

* * * * *

Frederick County

* * * * *

[FR Doc. 91-10276 Filed 4-30-91; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

RIN 3150-AC12

10 CFR Part 34

Safety Requirements for Industrial Radiographic Equipment

CFR Correction

In title 10 of the Code of Federal Regulations, parts 0-50, revised as of January 1, 1991, the text of § 34.33(a), appearing on page 448 and 449 should be interchanged.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-25; Amdt. 39-6956]

Airworthiness Directives; General Electric Company (GE) CF6-45 and CF6-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-45 and CF6-50 series turbofan engines, which requires repetitive inspections of high pressure compressor (HPC) rear shafts, and also requires installation of a certain rear shaft flange bolt configuration. This amendment is prompted by the report of 35 HPC rear shafts found cracked in the bolt hole area. This condition, if not corrected, could result in HPC rear shaft fracture, inflight engine shutdown, and uncontained engine failure.

DATES: Effective June 17, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of June 17, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive, applicable to GE CF6-45 and CF6-50 series turbofan engines, which requires repetitive fluorescent penetrant inspections of the HPC rear shaft, and installation of a certain HPC aft shaft flange bolt configuration, was published in the **Federal Register** on November 13, 1990 (55 FR 47339).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received. The commenter expressed no objection to the proposed rule.

After review of the available data, including the one comment received, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for minor changes to the compliance section. In particular, the repetitive inspection requirement for shafts equipped with hook bolts has been eliminated, as that configuration was never eligible for continued service use. Also, the tapered turn-around bolt installation requirement of paragraph (c) of the NPRM, has been incorporated into paragraph (a) of the final rule. Other minor changes were also made to the text for added clarity, including mandating the latest GE Service Bulletin 72–958, Revision 1, dated October 18, 1990.

There are approximately 2,158 CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. It is estimated that 517 engines will be affected by this AD, that it will take approximately 2 manhours per engine per inspection to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that 625 required inspections will occur annually. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $50,000 annually.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC–10, Boeing 747, and Airbus A300 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent high pressure compressor (HPC) rear shaft failure, inflight engine shutdown, and uncontained engine failure, accomplish the following:

(a) Fluorescent penetrant inspect HPC rear shafts, Part Numbers (P/N) 9127M58P03, 9079M63P12, 9079M63P15, 9079M63P16, 9079M63P17, 9079M63P18, and 9079M63P19, in accordance with the Accomplishment Instructions of GE Service Bulletin (SB) 72–958, Revision 1, dated October 13, 1990, as follows:

(1) For HPC rear shafts currently installed with hook bolts, P/N 9012M99G10, 9114M95G07, and 9114M95G10, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 10,000 cycles since new (CSN) or greater on the effective date of this AD, inspect within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 10,000 CSN on the effective date of this AD, inspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,500 CSN prior to inspection.

(iii) For shafts that have been previously inspected and have 3,000 cycles since late inspection (CSLI) or less on the effective date of this AD, reinspect within 4,500 CSLI, or before accumulating 7,500 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,000 CSLI on the effective date of this AD, reinspect within the next 1,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft hook bolts identified in (a)(1) of this AD, after any inspection performed in accordance with paragraph (a)(1) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts, P/N 1375M69P01, inspect in accordance with the following schedule:

(i) For shafts which have not been previously inspected and have 6,500 CSN or greater on the effective date of this AD, inspect within the next 2,500 CIS after the effective date of this AD.

(ii) For shafts which have not been previously inspected and have less than 6,500 CSN on the effective date of this AD, inspect prior to accumulating 9,000 CSN.

(iii) For shafts that have been previously inspected and have 3,500 CSLI or less on the effective date of this AD, reinspect within 6,000 CSLI, or before accumulating 9,000 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,500 CSLI on the effective date of this AD, reinspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 9,000 CSN, whichever occurs later.

(v) Remove from service, HPC rear shaft turn-around bolts identified in paragraph (a)(2) of this AD, after any inspection performed in accordance with paragraph (a)(2) of this AD, and replace with new tapered turn-around bolts, P/N 1375M69P01.

Note: Information concerning the tapered turn-around bolt noted in paragraph (a) of this AD can be found in GE SB 72–877.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Thereafter, for shafts which have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with the Accomplishment Instruction of GE SB 72–958, Revision 1, dated October 18, 1990, at intervals not to exceed 6,000 CSLI.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

The initial and repetitive inspection program shall be done in accordance with the following GE document:

Document	Page	Revision	Date
GE SB 72–958.	3,4,5,6	Original	Aug. 15, 1990.
	1,2	Rev. 1	Oct. 18, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be

inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective June 17, 1991.

Issued in Burlington, Massachusetts, on March 18, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-10246 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-43-AD; Amendment 39-6989]

Airworthiness Directives; O_2 Corporation (Frank McGowan Company) Oxygen Mask Presentation Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain O_2 Corporation oxygen mask presentation units. This action requires the inspection of the lanyard pins on these units and the replacement of any faulty deployment lanyard pins. One incident has occurred where an inoperative oxygen supply system occurred because a lanyard pin could not be readily pulled. The actions specified by this AD are intended to prevent a malfunction that could result in an inoperative passenger oxygen system and possible serious physical impairment of passengers during an emergency situation.

EFFECTIVE DATE: June 3, 1991.

ADDRESSES: Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634-1240; Facsimile (316) 634-1061. Information that is applicable to this AD may be obtained from the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4413.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain O_2 Corporation oxygen mask presentation units was published in the **Federal Register** on January 9, 1991 (56 FR 811). The action proposed the inspection of the lanyard pins on these units and the replacement of any faulty deployment lanyard pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to two comments received. One commenter recommended that the FAA should require: (1) An inspection of oxygen masks in the field for stress fracture, damage, etc. at the point of the Scott part number (P/N) 289-632 clip attachment to the mask; (2) reidentification of the mask if the mask hose has been modified; (3) changing the means of attaching the lanyard cord to the mask by the use of a P/N 289-649 ring. The FAA is taking AD action on a report of a malfunctioning lanyard pin. The FAA has not received reports of incidents that describe the situations that the commenter is referring to. If the FAA were to receive such reports, further rulemaking in this area could take place at a future date. The other commenter commended the FAA on its action and recommended that it continue to review the situation. No comments were received on the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts are available from the manufacturer at no cost to the airplane owner or operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

O_2 Corporation (Frank McGowan Co.): Amendment 39-6989. Docket No. 90-CE-43-AD.

Applicability: The following Mask Presentation Unit Part Numbers that are installed on, but not limited to, British Aerospace 125-800A airplanes; Challenger CL600-1A11, CL600-2B16, and CL600-2A12 airplanes; Gulfstream G-1159, G-1159A, G-1159B, and G-IV airplanes; and Falcon 20 airplanes, certificated in any category:

121-040-04	150-004-03	151-020
150-002	150-004-04	151-020-02
150-002-01	150-004-05	151-020-04
150-002-02	150-004-06	152-001
150-002-03	150-004-07	152-001-01
150-002-04	150-004-08	152-001-04
150-002-05	150-004-12	152-001-05
150-002-08	150-005	152-001-08
150-003T	150-006	152-001-13
150-003-04T	150-022	152-003
150-004	151-010	152-004
150-004-01	151-010-02	152-004-05
150-004-02	151-010-04	

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent malfunctioning of the lanyard release pin that could prevent the flow of

oxygen to a passenger in an emergency situation, accomplish the following:

(a) With the oxygen system activated, perform a test of the lanyard release pins by accomplishing the following:

(1) Open the passenger mask presentation units of the airplane and allow the mask assemblies to drop out.

(2) Make up a 7.5 pound weight with an attached string and hook (e.g., spring, clip, etc.).

(3) Attach the hook to the lanyard attaching point of each actuator pin without dropping the weight and allow the weight to hang from the lanyard attaching point.

(b) If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(c) If the pin does not pull free from the oxygen actuator valve using the test required by paragraph (a) of this AD, prior to further flight accomplish the following:

(1) Replace the pin with either part number 100–111–2 or 100–111–3, which has a 20-degree angle and a rounded nose.

Note 1: The pin is available from the manufacturer by contacting Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634–1240; Facsimile (316) 634–1061.

(2) Test the replacement pin installation in accordance with the test requirements of paragraph (a) of this AD to assure that the lanyard pin can be removed with a pull of 7.5 pounds or less. If the pin pulls free from the oxygen actuator valve at 7.5 pounds or less of hanging weight, then the pin is satisfactory and the unit may be returned to service.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946–4419. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of any information that is applicable to this AD from the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–43–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Replacement parts that might be needed to complete the actions of this AD may be obtained from Mr. Burt Parry, O_2 Corporation, 3522 N. Comotara, Wichita, Kansas 67226; Telephone (316) 634–1240; Facsimile (316) 634–1061.

This amendment becomes effective on June 3, 1991.

Issued in Kansas City, Missouri, on April 19, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–10247 Filed 4–30–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ANE–10; Amendment 39–6981]

Airworthiness Directives; Textron Lycoming Model TIO–540–AE2A Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Textron Lycoming Model TIO–540–AE2A reciprocating engines, which requires replacement of exhaust transition flange bolts with longer through-bolts which incorporate lock nuts. This amendment is prompted by an aircraft accident caused by engine power loss resulting from exhaust transition flange bolt loss and flange separation. This condition, if not corrected, could result in engine power loss, engine fire, and possible loss of the aircraft.

EFFECTIVE DATE: May 21, 1991.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming/Subsidiary of Textron Inc., 632 Oliver Street, Williamsport, Pennsylvania 17701. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Nick Minniti or Pat Perrotta, Propulsion Branch, ANE–174, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION: The FAA has determined that four engine power loss incidents have occurred which involved separation of the exhaust transition flange because of loose or missing bolts. One incident resulted in a crash landing, loss of aircraft and injuries.

Since this situation is likely to exist or develop on other engines of the same type design, this AD requires replacement of the exhaust transition bolts with longer through-bolts which incorporate lock nuts.

Since this condition can result in engine power loss and possible damage to the aircraft, there is a need to minimize the exposure of these engines to exhaust transition flange bolt loss and flange separation. In addition, based on the above, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Textron Lycoming: Applies to Textron Lycoming Model TIO-540-AE2A engines, with serial numbers up to but not including L9161-61A, except L9157-61A, installed in Piper Malibu Mirage aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent engine power loss, engine fire, and possible loss of aircraft, accomplish the following:

(a) Remove and replace exhaust transition flange blots, within the next 10 hours in service, after the effective date of this AD, in accordance with the following procedures:

(1) Apply penetrating oil to existing exhaust transition flange bolts and remove the two bolts.

(2) Install the following hardware in place of the removed bolts:

Lycoming Part No.	Description	Quantity
LW-31SS-1.19	Bolt	2
77611	Gasket	1
STD-2043	Nut	2

(3) Torque the bolts to 17 ft.-lbs. (Do not use lockwashers on the bolts.) It may be necessary to start the lock nut prior to torqueing.

(4) Install the locknuts on the protruding threads of the bolts, and insure that the bolts do not loosen during installation.

(5) Recheck torque on bolt heads to ensure proper torque is retained (17 ft.-lbs.).

Note: Further information can be obtained from Textron Lycoming Service Bulletin No. 491A, dated February 21, 1990.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate), an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Textron Lycoming/Subsidiary of Textron Inc., Williamsport, Pennsylvania 17701. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

This amendment becomes effective May 21, 1991.

Issued in Burlington, Massachusetts, on April 10, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-10248 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-AGL-16]

Establishment of R-3403C and Alteration of R-3403A Jefferson Proving Ground, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R-3403C Jefferson Proving Ground, IN, to provide for the safety of aviation activity in the vicinity of essential Department of Defense weapons system testing. The new restricted area is a small area, approximately 4 nautical miles square, extending from the surface to 3,000 feet mean sea level (MSL), with a time of designation of "Continuous." R-3403C is located entirely within an existing Jefferson Proving Ground restricted area, R-3403A, which extends from the surface to 43,000 feet MSL, and has a time of designation of 0630 to 2400 local time daily. R-3403C will be utilized to contain testing of the Family of Scatterable Mines (FASCAM). The testing of these mines requires a "continuous" time of designation since malfunctions may result in an unpredictable number of intermittent detonations during the period 0001 to 0630 hours when the existing R-3403A is not active.

EFFECTIVE DATE: 0901 UTC, May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Rob Bellamy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9328.

SUPPLEMENTARY INFORMATION: .

The Rule

The purpose of this amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) is to establish a small subdivision within the existing Jefferson Proving Ground restricted airspace to protect air traffic from possible hazards from exploding mines. A small portion of the existing R-3403A is utilized to conduct FASCAM testing. Once placed in the test site field, the mines normally detonate within a programmed period. When the items function as designed, the detonations occur within a short period of time. However, if malfunctions occur, an unpredictable number of intermittent detonations can be expected at any time, possibly during the period from midnight to 0630 in the morning. Mines that do not function will be treated as dud munitions. As such, they must remain on the field for a period of 24 hours beyond the preset self-destruct time and then be destroyed by U.S. Army demolition specialists. Functioning of the mines is unpredictable; therefore, a continuous restricted area is necessary to ensure aviation safety. The Department of Defense has stated that this testing is essential for immediate production acceptance purposes. The location of R-3403C within an existing restricted area, combined with its small lateral size and low vertical limits, results in minimal, if any, impact on the flow of air traffic in the area. Although the probability of detonations actually occurring during the period midnight to 0630 is low, the possibility exists; therefore, this action is necessary to enhance aviation safety. In addition, the description of R-3403A is amended to exclude the airspace within R-3403C when activated. Section 73.34 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

Under the circumstances presented, the FAA concludes that there is a need for a regulation to establish R-3403C and to amend R-3403A Jefferson Proving Ground, IN. I find that notice and public procedure under 5 U.S.C. 553(b) are contrary to the public interest because this action merely subdivides an area already designed as restricted airspace in order to enhance aviation safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The Department of the Army has assessed the environmental effects of the Mine Test Facilities at Jefferson Proving Ground. It was determined that these activities would result in no environmental impact. This action does

not increase the amount of existing special use airspace.

Restricted Area R-3403C is established as a further subdivision entirely within existing restricted area and is of such small lateral and vertical dimensions that it will impose minimal if any impact on nonparticipating aircraft. Because of these factors, no action is required by the FAA to regulate the flow of nonparticipating aircraft outside R-3403C. On the basis of the Army's Environmental Impact Assessment, and the Army's Record of Environmental Consideration, the FAA finds that the establishment of R-3403C will result in no significant impact on the environment.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.34 [Amended]

2. Section 73.34 is amended as follows:

R-3403A Jefferson Proving Ground, IN [Revised]

Boundaries. Beginning at lat. 39°02'57" N., long. 85°27'42" W.; to lat. 39°02'00" N., long. 85°22'00" W.; to lat. 38°56'06" N., long. 85°22'00" W.; to lat. 38°50'35" N., long. 85°22'50" W.; to lat. 38°50'00" N., long. 85°24'00" W.; to lat. 38°50'00" N., long. 85°27'42" W.; to the point of beginning excluding that airspace designated as R-3403C, when activated.

R-3403C Jefferson Proving Ground, IN [New]

Boundaries. Beginning at lat. 38°55'13" N., long. 85°23'26" W.; to lat. 38°55'13" N., long. 85°22'11" W.; to lat. 38°53'54" N., long. 85°22'23" W.; to lat. 38°52'54" N., long. 85°23'43" W.; to the point of beginning.

Designated altitudes. Surface to 3,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Indianapolis ARTCC.

Using agency. U.S. Army, Commanding Officer, Jefferson Proving Ground, Madison, IN.

Issued in Washington, DC, on April 19, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-10249 Filed 4-30-91; 8:45 a.m.]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 241, 251 and 271

[Release Nos. 34-29131; 35-25303; IC-18114]

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Interpretations and technical amendments.

SUMMARY: The Commission today is announcing the publication of a release that sets forth the Commission's interpretive views regarding shareholder approval for amendments to employee benefit plans intended to comply with rule 16b-3 under section 16 of the Securities Exchange Act of 1934. The Commission also is adopting technical amendments necessary to correct the newly adopted rules under section 16.

EFFECTIVE DATE: The interpretations are effective April 26, 1991. The technical amendments are effective May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mark W. Green or Brian J. Lane, Division of Corporation Finance, 450 Fifth Street NW., Washington, DC 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Commission recently adopted comprehensive revisions [1] to the rules under section 16 [2] of the Securities Exchange Act of 1934 (the "Exchange Act").[3] Largely in recognition of shareholders' interest in the level of compensation, the Commission decided to retain the shareholder approval requirement of former rule 16b-3,[4] the exemptive rule for employee benefit plan transactions by insiders.[5] The interpretive portion of this release, initiated at the Commission's request, is intended to provide guidance to companies in complying with rule 16b-3's plan amendment shareholder approval requirement. The release also includes technical non-substantive corrections to the rules.

Footnotes at end of document.

I. Shareholder Approval Requirements

Rule 16b-3 requires as a condition to exemption that plans and material plan amendments be approved by shareholders.[6] Consistent with the former rules, new rule 16b-3's shareholder approval requirement does not apply to two types of plans, both established as trusts. First, plans in trust form are excluded where less than 20 percent of the total market value of securities held by the trust are employer securities held by insiders.[7] Second, pension and retirement plans in trust form are excluded when they have broad-based employee participation.[8]

In this connection, questions have arisen with respect to the effect of plan withdrawal provisions on a plan's status as a pension or retirement plan. Recognizing the types of withdrawals authorized, the types of withdrawals penalized and the nature of the penalties imposed by the Internal Revenue Code (the "Code") on plans qualified under section 401(k) of the Code,[9] such plans will be considered pension or retirement plans under former rule 16a-8(g)(3) and new rule 16b-3(b)(3)(ii).[10]

II. Interpretation of Plan Amendment Shareholder Approval Requirements

Rule 16b-3 requires shareholder approval of plan amendments in three circumstances. Specifically, "any amendment to the plan shall be . . . approved (by shareholders) if the amendment would: (A) materially increase the benefits accruing to participants under the plan; (B) materially increase the number of securities which may be issued under the plan;[11] or (C) materially modify the requirements as to eligibility for participation in the plan." [12]

Whether an amendment requires shareholder approval depends first, on whether the amendment affects insiders, and second, if it affects insiders, on whether the amendment is "material" as discussed below. A plan amendment requires shareholder approval only where it materially increases the number of securities issuable to insiders, modifies eligibility requirements to add a class of insiders, or increases benefits to insiders.[13]

An objective analysis is appropriate with respect to whether an amendment materially increases the number of shares issuable under a plan. But with respect to whether a plan amendment materially modifies eligibility or increases benefits by, for example, adding a new class of insiders or type of award or grant, a qualitative analysis is

appropriate. The qualitative analysis should be applied in light of both the plan provisions previously presented to shareholders for their approval and the amendment's purposes and effects.

A. Increase Securities Issuable

Amendments increasing the number of securities issuable to insiders under the plan by more than ten percent are material.[14] The ten percent test is based on the amount of securities issuable under the plan as last expressly approved by shareholders.[15] Increases to reflect stock splits and stock dividends are not included in the ten percent calculation.

B. Modify Eligibility

An amendment that adds a class of insiders is a material amendment regardless of the number in the class added, unless the amendment is needed to comport with changes in the Code, the Employee Retirement Income Security Act of 1974 ("ERISA"),[16] their rules or other laws.[17] For example, where a plan is amended to add outside directors as a new class of insider participants, shareholder approval is required.[18] A new class of insiders also would be added as a consequence of a plan amendment decreasing a plan's minimum length of service eligibility requirement.[19] On the other hand, where the plan is amended to reflect an increase in the number of insiders in a class previously eligible to participate, due to, for example, an acquisition of another company, the amendment does not modify eligibility requirements materially.

C. Increase Benefits

Numerous questions have arisen about whether particular types of plan amendments are deemed to increase benefits materially. When a plan sponsor determines that a plan amendment is necessary or desirable to authorize additional benefits, whether the amendment requires shareholder approval will depend on the nature of the benefits authorized by the amendment and on how comparable they are to those benefits previously authorized by shareholders under the plan.[20] The Commission recognizes that, although the determination of whether a plan amendment requires shareholder approval is therefore usually dependent on the pre-existing terms of the plan, the Commission's concern for shareholders' interest in the level of compensation obliges it to seek to expedite future requests for staff advice as to the applicability of the shareholder approval requirement to proposed plan amendments. The following interpretations address some of the more common shareholder approval questions. The Commission has requested the Division to monitor future interpretive letters with the objective of publishing further interpretive releases on this subject, as appropriate.

In some instances the Division has found that amendments to plans authorize benefits so comparable to those previously authorized under the plan that shareholder approval is not required.[21] For example, shareholder approval was not required where a plan amendment permitted an insider to use previously acquired shares, or to have shares withheld, to satisfy an option exercise payment when the plan previously authorized SARs.[22] Similarly, an amendment to a plan that previously had authorized SARs to permit the employer to make plan-related non-market rate loans to insiders to help them exercise options did not require shareholder approval.[23] These amendments will continue to be viewed as not requiring shareholder approval.

In contrast, there are instances where amendments to plans authorize benefits so unlike those previously authorized under the plan that shareholder approval is required. For example, if a plan amendment is necessary to allow the grant of appreciation rights that are exercisable upon or following certain events, and/or that provide a benefit measured in a manner different from what the plan otherwise permits,[24] shareholder approval of such an amendment will be required.[25] Similarly, an amendment to permit issuance of reload options generally requires shareholder approval notwithstanding other provisions of the plan that authorize SARs or permit insiders to use previously acquired shares or have shares withheld to pay for option exercise.[26] The reload option permits the insider optionee to receive not only the original option spread, but the spread on follow-up grants as well—the aggregate amount of which may approach or exceed the original spread.

As has been the case traditionally, the following amendments also are viewed as not increasing benefits materially and therefore do not require shareholder approval. First, a plan amendment adjusting option terms to reflect a restructuring transaction, such as a holding company formation, stock split or dividend, extraordinary dividend, spin-off or issuance of repurchase rights, does not require shareholder approval where the plan includes an anti-dilution provision.[27] Second, an amendment allowing insider participants to elect to have shares withheld, or to deliver previously owned shares, to satisfy federal (including FICA), state and local tax withholding requirements or liability, up to the amount calculated by applying the insider's maximum marginal rate, arising from (1) the exercise for securities of an option, warrant or similar right related to any shares withheld; or (2) the receipt or vesting of shares or similar securities related to any shares withheld, does not require shareholder approval.[28] Third, plan amendments needed to comport with changes in the Code, ERISA, their rules [29] or other laws do not require shareholder approval.[30] Fourth, shareholder approval is not required for an amendment to permit insider participants to defer and/or direct installment payment of distributions.[31] Finally, a plan amendment to pay benefits to a greater extent in stock and to a lesser extent in cash than previously provided does not require shareholder approval.[32]

Questions also arise as to plan amendments that convert discretionary company contributions to mandatory contributions. Such an amendment does not provide benefits comparable to those under previously authorized provisions approved by shareholders and requires shareholder approval.[33]

Finally, former rule 16b–3 addressed "any amendment to the plan" but also had been applied to amendments affecting outstanding awards, grants or securities. Henceforth, in such cases the determination will turn on whether the amended terms of the outstanding awards, grants or securities would be permitted for new issuances under the plan and whether the plan itself satisfies the shareholder approval requirement. Where an amendment affects outstanding awards, grants or securities, if the amended terms are consistent with the plan and the plan satisfies the shareholder approval requirement, the amendment does not require separate shareholder approval.[34] In essence the change is viewed and analyzed simply as a new grant or award under the plan.[35] Thus, for example, if a stock option originally was awarded with a vesting period of four years, and one year after grant an amendment reduced the vesting period to two years from the original grant, the amendment would be considered a new grant of an option with a one year vesting period. If, at the time of the amendment, the plan permitted the issuance of options with a one year vesting period, the amendment would not require shareholder approval. Likewise, if a plan was amended to permit payment in cash, in whole or in part, of an outstanding award, originally

required to be paid in securities, the amendment would not require shareholder approval if the insider could be given a similar type of new award payable in cash.[36]

III. Other Matters

The Commission solicited comment in the Adopting Release concerning "exit boxes" that were included on the final forms 4 and forms 5. The comment period expired March 31, 1991 without any comment being received. As such, the Commission has elected to retain the exit boxes on the forms, as set forth in the Adopting Release.

IV. Technical Amendments to the Final Rules

The Commission is issuing technical amendments to the following rules in part 240: Rule 16a–1(a)(2)(ii); rule 16a–1(c)(3); rule 16a–1(f); rule 16a–4 (b) and (c); rule 16a–8(b); rule 16b–3(c)(2)(i); rule 16b–3(e); and rule 16b–3(g). The technical amendments are intended to correct and clarify these rules by making the changes listed below.

List of Subjects in 17 CFR Parts 240, 241, 251, and 271

Reporting, Recordkeeping requirements, and Securities.

In accordance with the foregoing, title 17 chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. In § 240.16a–1, paragraph (a)(2)(ii)(A) is amended by adding a proviso and cross-reference after the semi-colon, paragraphs (c)(3)(i), (c)(3)(ii), and the first sentence of paragraph (f) are revised as follows:

§ 240.16a–1 Definition of Terms.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * * provided, however, that the presumption of such beneficial ownership may be rebutted; *see* also § 240.16a–1(a)(4);

* * * * *

(c) * * *

(3) * * *

(i) are awarded pursuant to an employee benefit plan satisfying the provisions of § 240.16b–3 (a)(1), (a)(2) and (c)(2); or

(ii) may be redeemed or exercised only upon a fixed date or dates at least six months after award, or incident to death, retirement, disability or termination of employment;

* * * * *

(f) The term "officer" shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. * * *

* * * * *

3. By revising the introductory text to paragraph (b) and the introductory text of paragraph (c) of § 240.16a–4 to read as follows:

§ 240.16a–4 Derivative securities.

* * * * *

(b) The exercise or conversion of a call equivalent position, if exempt from section 16(b) of the Act, shall be reported no later than the next Form 4 otherwise required or the Form 5 filed with respect to the fiscal year in which the transaction occurred, whichever is earlier, and all exercises and conversions, whether exempt or not, shall be treated for reporting purposes as:

* * * * *

(c) The exercise or conversion of a put equivalent position, if exempt from section 16(b) of the Act, shall be reported no later than the next Form 4 otherwise required or the Form 5 filed with respect to the fiscal year in which the transaction occurred, whichever is earlier, and all exercises and conversions, whether exempt or not, shall be treated for reporting purposes as:

* * * * *

4. By revising the introductory text of paragraph (b) of § 240.16a–8 as follows:

§ 240.16a–8 Trusts.

* * * * *

(b) *Trust Holdings and Transactions.* Holdings and transactions in the issuer's securities held by a trust shall be reported by the trustee on behalf of the trust, if the trust is subject to section 16 of the Act, except as provided below. Holdings and transactions in the issuer's securities held by a trust (whether or not subject to section 16 of the Act) may be reportable by other parties as follows:

* * * * *

5. In § 240.16b–3, by revising paragraph (c)(2)(i) and the introductory text of paragraph (e) and paragraph (g) as follows (the note following paragraph (g) is not affected):

§ 240.16b–3 Employee benefit plan transactions.

* * * * *

(c) * * *

(2) * * *

(i) *Disinterested Administration.* The grant or award is made pursuant to an employee benefit plan in which the selection of officers and directors for participation and decisions concerning the timing, pricing, and amount of a grant or award, if not determined under a formula meeting the conditions in paragraph (c)(2)(ii) of this section, are made solely by the board of directors, if each member is a disinterested person, or a committee of two or more directors, each of whom is a disinterested person, *i.e.*, a director who is not, during the one year prior to service as an administrator of a plan, or during such service, granted or awarded equity securities pursuant to the plan or any other plan of the issuer or any of its affiliates, except that:

* * * * *

(e) *Cash Settlements of Stock Appreciation Rights and Tax Withholding.* A transaction involving the exercise and cancellation of a stock appreciation right (whether or not the transaction also involves the related surrender and cancellation of a stock option), and the receipt of cash in complete or partial settlement of that right, or the cash settlement of an equity security to satisfy the tax withholding consequences of either the receipt or vesting of the equity security or the exercise of a derivative security related to the equity security, which shall be deemed a stock appreciation right, shall be exempt from section 16(b) of the Act if the plan satisfies the conditions of paragraph (a) and paragraph (b) of this § 240.16b–3, if applicable, and the following conditions are met:

* * * * *

(g) *Distributions of Plan Securities.* A distribution to a participant of securities that have been held pursuant to a plan for the benefit of that participant shall be exempt from section 16(b) of the Act if the plan satisfies the conditions of paragraph (a) and paragraph (b), if applicable, and the acquisition of the securities under the plan satisfied the conditions of either paragraph (c) or (d) of this § 240.16b–3.

* * * * *

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 251—INTERPRETIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

PART 271—INTERPRETIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Parts 241, 251 and 271 of title 17, chapter II of the Code of Federal Regulations are amended by adding each of the following Release Nos. and the release date of April 26, 1991, to the list of interpretive releases in each part: 34–29131, 35–25303, 1C–18114.

By the Commission.

Dated: April 26, 1991

Margaret H. McFarland,

Deputy Secretary.

FOOTNOTES

[1] Release No. 34–28869 (February 8, 1991) [56 FR 7242] (the "Adopting Release").

[2] 15 U.S.C. 78p (1988).

[3] 15 U.S.C. 78a *et seq.* (1988).

[4] 17 CFR 240.16b–3. References in this release to "Rule 16b–3" include both former and newly adopted ("new") Rule 16b–3 unless otherwise specified.

[5] An "insider" is: (1) pursuant to Section 16(a) of the Exchange Act, an officer or director of an issuer with a class of equity securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l* (1988)] or a holder of over ten percent of any such class; (2) pursuant to Section 30(f) of the Investment Company Act [15 U.S.C. 80a–29(f) (1988)], an officer, director, member of an advisory board, investment adviser or affiliated person of an investment adviser of a registered closed end investment company or a holder of over ten percent of a class of securities (other than short-term paper) issued by such a company; or (3) pursuant to section 17(a) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79q(a) (1988)], an officer or director of a registered public utility holding company.

Under the new rules, the term "officer" includes an issuer's president, principal financial officer, principal accounting officer (or controller where there is no principal accounting officer), vice presidents in charge of a principal business unit or function and any other person, whether employed by the issuer or its parent or subsidiary, who performs similar policy-making functions for the issuer. *See* new Rule 16a–1(f), section IV, *infra*.

[6] Issuers also may be required to seek shareholder approval for their benefit plans pursuant to state law or the rules of self-regulatory organizations. *See, e.g.*, N.Y. Bus. Corp. Law Section 505(d); NYSE Company Manual Section 312.03(a).

[7] *See* new rule 16b–3(b)(3)(i). These plans have been exempt under former Rule 16a–8(b) [17 CFR 240.16a–8(b)]. The phrase used in that rule, "consists of equity securities with respect to which reports would otherwise be required," has been replaced with "consists of equity securities held by persons subject to section 16(a) of the Act," which comports with the manner in which the former Rule has been interpreted.

[8] *See* new rule 16b–3(b)(3)(ii). These plans have been exempt under former Rule 16a–8(g)(3) [17 CFR 240.16a–8(g)(3)]. The phrase used in that Rule, "whose employees generally are the beneficiaries of the plan," has been replaced with "providing for broad-based employee participation," which comports with the manner in which the former rule has been interpreted and is essentially the same phrase used in new Rule 16b–3(d)(2)(i)(A). A plan satisfying the conditions of Section 410(b) of the Internal Revenue Code [26 U.S.C. 410(b) (1988)] satisfies the requirement for broad-based employee participation.

[9] 26 U.S.C. 401(k) (1988). Section 72(t) of the Code [26 U.S.C. 72(t) (1988)] generally imposes a ten percent tax on pre-age 59-½ withdrawals. Section 72(t) generally does not impose the tax on pre-age 59 ½ withdrawals in connection with (1) death; (2) disability; (3) an annuity; (4) post-age 55 separation from service; (5) dividends; (6) medical expenses; and (7) qualified domestic relations orders.

[10] This position modifies the position expressed in Release No. 34–18114 (Sept. 24, 1981) [46 FR 48147] (the "1981 Q&A Release") at question and answer ("Q&A") 70 and certain letters issued by the Division of Corporation Finance (the "Division"). Q&A 70 stated that for a plan to be regarded as a pension or retirement plan under former rule 16a–8(g)(3), significant penalties had to accompany early plan withdrawals and cited as examples penalties other than those imposed by the current Code. Letters reflecting the position prior to modification include, for example, *Gainsco, Inc.* (March 19, 1991) (the staff's position granted largely in reliance on the plan's providing a one year participation suspension for any insider making an early plan withdrawal).

[11] Former rule 16b–3(c) and new Rule 16b–3(a)(1) require that plans limit the number of securities issuable by requiring them to specify the amount of securities to be awarded or the method by which the amount is to be determined. *See Thompson, Hine and Flory* (March 29, 1991).

[12] Former rule 16b–3(a) and new Rule 16b–3(b).

[13] To the extent that the 1981 Q&A release and Division letters suggest that insiders are not the sole focus of inquiry in determining whether shareholder approval is necessary, that position is modified.

[14] For purposes of determining the number of shares issued under a plan, the gross rather than net number of shares actually issued must be used. Therefore, shares tendered back by participants could not be added back in determining the number of shares available for issuance under the plan. *See, e.g., Anheuser-Busch Companies, Inc.* (Dec. 20, 1990). Shares underlying expired or cancelled and unexercised options or other derivative securities, however, could be added back.

[15] Historically, shareholder approval has not been required for an amendment extending a plan expiration date if the number of shares issuable is not increased as a result. *See, e.g., South Carolina National Corporation* (Jan. 8, 1991). The Commission intends to continue following this position.

[16] 29 U.S.C. 1001 *et seq.* (1988).

[17] *See, e.g., NCNB Corporation and Designated Subsidiaries Stock/Thrift Plan and Trust* (March 2, 1989) (amendment to decrease two-year eligibility requirement for participation to one-year does not require shareholder approval where decrease required to comport with a change in the Code). Similarly, an amendment needed to comport with the law that increases benefits does not require shareholder approval. *See* Section II.C, *infra*.

[18] Prior letters to the contrary may not be relied on with respect to plan amendments effected after publication of this release. *See, e.g., Transamerica Corporation* (March 30, 1990) (amendment to add a class of 13 non-employee directors did not require shareholder approval).

[19] Q&A 100(d) stated that an amendment waiving a two-year eligibility requirement for participation that significantly increases the number of participants, including insiders, was required to be approved by shareholders. To the extent that Q&A 100(d) suggests that the number of insiders added is significant, this position no longer may be relied upon with respect to plan amendments effected after publication of this release. As to prior letters that no longer may be relied upon with respect to plan amendments effected after publication of this release, *see, e.g., X/L Datacomp, Inc.* (March 2, 1987) (amendment to delete five-month eligibility requirement for participation did not require shareholder approval).

[20] Statements throughout this section on increases in benefits to the effect that shareholder approval is not required for an amendment assume that the amendment does not increase the number of securities issuable or modify eligibility requirements materially.

[21] This analysis of future awards also extends to amendments affecting outstanding awards, grants or securities.

[22] *See, e.g., C.R. Bard, Inc.* (March 3, 1989). This is true because such an amendment may be viewed as creating an SAR by allowing insiders to obtain their options' spread with no cash investment by pyramiding their shares. *See Colema Realty* v. *Bibow*, 555 F. Supp. 1030 (D. Conn. 1983) (amendment permitting insiders to use shares to pay option exercise prices enabled them to pyramid and thereby created the equivalent of an SAR). Pyramiding is the use of shares to exercise options for a greater number of shares which, in turn, are used to exercise even more options until all options sought to be exercised are exercised. Where the plan does not already authorize SARs or allow use of previously owned shares or withholding, shareholder approval would be required. *See*

also Release No. 34–19756 (May 24, 1983) [48 FR 23173].

[23] *See, e.g., The Walt Disney Company* (Dec. 26, 1986). Prior letters involving amendments introducing loan programs that did not examine whether SARs were authorized may not be relied on with respect to plan amendments effected after publication of this release. *See Media General, Inc.* (May 8, 1981) (amendment permitting company to make loans to participants to exercise plan options did not require shareholder approval).

[24] For example, plan sponsors often seek to amend plans so that "limited SARs" ("LSARs") that are exercisable only after certain triggering events (typically, a shift in corporate control or commencement of a tender offer) and that pay a benefit measured by a modified price formula (e.g., related to the average market price or the tender offer price for the issuer's securities) may be granted.

[25] 1981 Q&A Release, n.142 and prior inconsistent letters may not be relied on with respect to plan amendments effected after publication of this release. Note 142 indicated that an amendment to permit LSARs to be granted did not require shareholder approval if SARs already were authorized. *See, e.g., Gannett Co., Inc.* (Nov. 3, 1989) (amendment giving administrative committee discretion to grant LSARs to option holders where SARs authorized did not require shareholder approval).

[26] The holder of a reload option can surrender underlying shares to pay the exercise price of the option and, upon exercise, will receive an automatic grant of a new option at current market price for the number of shares surrendered.

[27] *See, e.g., Turner Broadcasting System, Inc.* (Nov. 5, 1990).

[28] *See, e.g., Brunswick Corporation* (Aug. 16, 1990) and *Alberto-Culver Company* (Jan. 22, 1990).

[29] *See Primark Corp.* (Oct. 23, 1987) (amendment to cause a plan to comply with a change in the Code by providing that employer matching contributions will vest after five years rather than the earlier of ten years of service or five years of continuous participation in the plan does not require shareholder approval). This position is consistent with the previously discussed position that amendments to eligibility requirements required by changes in the law do not require shareholder approval. *See* section II.B, *supra.*

[30] In addition, amendments needed to comport with the new Section 16 rules do not require shareholder approval. *See* Adopting Release, n.244.

[31] *See* Q&A 101(m) and *Boeing Co.* (Aug. 2, 1988).

[32] *See, e.g., Texaco, Inc.* (May 22, 1989) (amendment to allow benefits to be paid in stock rather than cash does not require shareholder approval); and *BellSouth Corporation* (March 26, 1987) (amendment to require performance unit awards to be paid in stock rather than stock and cash does not require shareholder approval).

Under the new rules, securities that may be redeemed or exercised only for cash can be acquired exercised and disposed of without Section 16 consequences if they (1) Are awarded pursuant to a plan satisfying the disinterested administration or formula requirement of rule 16b–3(c)(2); or (2) may be redeemed only upon a fixed date or dates at least six months after award or incident to death, retirement, disability or termination of employment. *See* new rule 16a–1(c)(3), section IV, *infra.* Issuers granting such securities are not subject to new Rule 16b–3's shareholder approval requirement.

[33] *See Anderson, Greenwood & Co.* (Dec. 10, 1984).

[34] Prior letters that did not examine the terms of the plan at the time of amendment may not be relied upon with respect to plan amendments effected after publication of this release. *See, e.g., Occidental Petroleum Corporation* (March 30, 1990) (amendment accelerating restricted stock vesting period on a shift in control did not require shareholder approval); *Summit Bancorporation* (Feb. 6, 1989) (amendment extending an outstanding option's expiration date from five years to ten years after grant required shareholder approval, even though the plan had provided that options could have a ten year expiration date); and *C3, Inc.* (March 4, 1985) (amendment giving a committee the discretion to determine vesting periods of options did not require shareholder approval, even though the plan had provided that options must vest at 20 percent per year).

[35] An extension of an option exercise period is deemed to be a redemption of an old security and grant of a new security for purposes of Section 16. *See* Release No. 34–26333 (Dec. 13, 1988) [53 FR 49997, 50009].

[36] Q&A 101(g) is modified to the extent the answer did not take into account the terms of the plan.

[FR Doc. 91–10396 Filed 4–30–91; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 88F–0055]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of modified kaolin clay as a component of coatings used in paper and paperboard intended for use in contact with food. This action responds to a petition filed by J.M. Huber Corp.

DATES: Effective May 1, 1991; written objections and requests for a hearing by May 31, 1991.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 15, 1988 (53 FR 8512), FDA announced that a food additive petition (FAP 8B4063) had been filed by J.M. Huber Corp., Route 4, Macon, GA 31298, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of a modified sodium aluminosilicate (modified kaolin clay) in the manufacture of paper and paperboard for use in contact with food. J.M. Huber Corp. subsequently limited the petition to provide only for the safe use of their modified kaolin clay as a component in coatings used in paper and paperboard products intended for food-contact use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the additive in the manufacture of paper and paperboard is safe, and that the regulations should be amended in § 176.170 as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting the finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 31, 1991, file with the Dockets Management Branch (address above) written objections

thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (b)(2) by alphabetically adding a new entry in the table under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of Substances	Limitations
* * *	* *
Modified kaolin clay (CAS Reg. No. 1344-00-9) is produced by the reaction of sodium silicate (CAS Reg. No. 1344-09-8) and kaolinite clay (CAS Reg. No. 1332-58-7) under hydrothermal conditions. The reaction product has a molecular weight between 246 and 365 and consists of 46 to 55 percent silicon dioxide (SiO_2), 28 to 42 percent aluminum oxide (Al_2O_3), and 2 to 7 percent of sodium oxide (Na_2O). The reaction product will not consist of more than 70 percent modified kaolin clay.	For use only as a component of coatings in paper and paperboard products at a level not to exceed 9 percent by weight of the coating intended for use in contact with food of Types I through IX described in Table 1 of paragraph (c) of this section under conditions of use C through H described in Table 2 of paragraph (c) of this section.
* * * * *	

* * * * *

Dated: April 19, 1991

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10243 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89-02; Notice 3]

RIN 2127-AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: On January 12, 1990, Congress enacted the 1991 Appropriations Act for the Department of Transportation and Related Agencies. Section 336 of that Act amends 23 U.S.C. 410, signed into law on November 18, 1988, which authorized a new incentive grant program for states with comprehensive drunk driving prevention programs. The amendment made three technical corrections to the statute authorizing the section 410 program. The amendments made in today's final rule revise portions of the agency's regulation implementing section 410, to reflect these statutory changes. These amendments do not change the manner in which states will certify that they are eligible for section 410 incentive grants, or the procedure by which NHTSA will award such grants; they merely implement the changes mandated by section 336.

EFFECTIVE DATE: This rule is effective May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis S. Buchanan, Office of Alcohol and State Programs, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2753: or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366-1834.

SUPPLEMENTARY INFORMATION: On November 18, 1988, the Anti-Drug Abuse Act of 1988, Public Law 100-690, was signed into law by the President. Section 9001 et seq. of the Act, entitled the Drunk Driving Prevention Act of 1988, amended the Highway Safety Act of 1966, 23 U.S.C. 401, et seq., by adding section 410, which authorized a new incentive grant program. Under this grant program a State may qualify for basic and supplemental incentive grants by adopting and implementing comprehensive drunk driving prevention programs which are self-sustaining and which provide for certain specified elements that will improve the effectiveness of the State's enforcement of drunk driving laws. A State may qualify for these grants for up to three fiscal years.

On June 26, 1989 (54 FR 26783), NHTSA issued a Notice of Proposed Rulemaking (NPRM) proposing the manner in which States would certify that they are eligible for the grants, and the procedure by which NHTSA would award such grants. The notice also requested comments on the agency's proposal.

The final rule, which was published in the **Federal Register** on January 12, 1990 (55 FR 1185), has been in place for a full year and NHTSA has not received any applications under the regulation's certification requirements. For this reason, Congress decided to make technical corrections to the statute authorizing the section 410 program.

Section 336 of Public Law 101-516 amends section 410 to make technical corrections to the statute. The corrections address three areas: The period of time by which the administrative review of a license suspension/revocation action must take place; the use of administrative fines in determining self-sufficiency of drunk driving prevention programs; and the amount of funds to be returned to

communities for use in sustaining drunk driving programs.

These corrections eliminate inconsistencies and address certain situations previously not taken into consideration in the section 410 statute. The Conference Report on the measure provided that, "these changes would bring the 410 program in line with congressional intent, and would lead to the expenditure of funds requested by the administration and provided by the Committee." The Report cautions, however, that the changes "are not intended to loosen the rigorous standards of the 410 program."

Each of these technical corrections, and the corresponding regulatory changes being made as a result, are discussed below.

Timing of Administrative Hearings

Prior to this legislative amendment, section 410 required that the eligible states provide for an administrative driver's license suspension or revocation system that contained the following elements:

1. Law enforcement officers take possession of an individual's driver's license on the spot if the driver fails a chemical test or refuses to take one;
2. Officers serve offenders with notice of the suspension of revocation and of their rights, including the right to an administrative review:
3. The officers immediately forward a report to the appropriate licensing agency within the State;
4. Due process is ensured by providing offenders with the right to an administrative review;
5. The period of suspension or revocation is not less than 90 days for first offenders and not less than 1 year for repeat offenders; and
6. The administrative review takes place and the suspension or revocation, if any, takes effect not later than 15 days after the individual receives notice (30 days if the state can show that meeting the 15-day requirement would impose a hardship on the state).

Congress found that States using an administrative suspension/revocation process are finding it difficult to complete the process within the time period now prescribed. While Congress recognized that the process is most effective when completed in as short a time as possible, it determined, particularly for larger States or those with limited computer resources, that allowance should be given in cases where the strict time period cannot be adhered to. Section 410 has, therefore, been revised to reflect this concern.

Section 336 of Public Law 101–516 amends section 410 by removing the requirement that the administrative review must be held within 15 or 30 days of arrest. States must still provide offenders with the right to an administrative review of a license suspension or revocation action and the officer must provide the offender with notice of this right, but the review is no longer required to be conducted within the 15 or 30 day time period required for license action. The suspension/revocation still must occur within the prescribed period of time. This final rule revises the agency's regulation accordingly.

Self-Sustaining Drunk Driving Prevention Program

Prior to this legislation amendment, section 410(e) specified that eligible States must provide also:

> "For a self-sustaining drunk driving prevention program under which the fines or surcharges collected from individuals convicted of operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehesive programs for the prevention of such operations of motor vehicles."

NHTSA interpreted the statute to require that all fines and penalties collected through enforcement of drunk driving laws must be returned for use in sustaining drunk driving programs, and included this requirement in its January 12, 1990 final rule. While this is in line with congressional intent to the extent that programs should be as self-sufficient as possible, the Committee states in its Report that this requirement does not take into consideration situations where States would choose to increase drunk driving penalties above and beyond levels needed to sustain their programs.

Accordingly, the amendment to Section 410 removes the requirement the all fines and surcharges must be returned, or an equivalent amount provided. to communities with comprehensive drunk driving prevention programs. It requires instead that a "significant portion of" fines and surcharges collected be returned, or an equivalent amount provided to communities. This final rule revises the agency's section 410 regulation to implement this change. It will leave the term "significant portion" undefined. When reviewing applications from states that do not return all fines and surcharges (or provide an equivalent amount) to communities. the agency intends to consider circumstances such as whether community programs are as self-sufficient as possible and whether the State collects penalties above and beyond levels needed to sustain their programs, to determine State compliance with this criterion.

Section 410(e)(2) specified, prior to its revision, that the fines or surcharges to be returned were those "collected from individuals convicted of operating a motor vehicle while under the influence of alcohol." NHTSA adopted this requirement in its implementing regulation. In its January 12, 1990 final rule, the agency explained, "this provision covers only fines or surcharges imposed on convicted individuals. Based on the statutory language in section 410(e)(2), the regulation provides that the revenues would not include fines or surchages collected from individuals who lose their licenses administratively, but are not convicted of operating a motor vehicle while under the influence of alcohol." The agency further stated, "Minnesota believes this result is inconsistent with the rest of the section 410 statute, which puts such importance on administrative actions. and Mothers Against Drunk Driving (MADD) states that it believes this is not what Congress intended. It is, however, what Congress included in the law and the agency is, therefore, bound by it."

In section 336 of Public Law 101–516, Congress eliminated this inconsistency, and provided that the fines or surcharges identified in the statute are those that are collected from individuals" apprehended and fined for" rather than convicted of operating motor vehicle while under the influence of alcohol. In this final rule, the agency's implementing regulation has been appropriately revised.

Administrative Procedures

Because this regulation relates to a grant program, the requirements of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the legislative changes addressed in this final rule involve no discretion on the part of the agency. As a result, the agency does no believe it would benefit by the notice and comment procedures with regard to the amendments made by today's final rule. These amendments merely implement the legislation by making the changes to the agency's regulations about which the agency has no discretion. They are technical corrections implemented to eliminate inconsistency and being the program regulations into conformity with the intent of the congressional authors of the program. Therefore, even if the notice and comment provisions of the Administrative Procedure Act did apply, the agency would have good cause to

dispense with notice and comments as unnecessary.

Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 410 program is voluntary. Accordingly, a full regulatory evaluation is not necessary. Moreover, this rule merely implements non-discretionary changes based on legislative amendments. Thus, if there were any economic impacts associated with this action, they would flow from the law, not this rule.

When the agency promulgated regulations to implement the section 410 program on January 12, 1990 (55 FR 1185), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in public docket (Docket No. 69–02; Notice 2). Persons interested in reviewing this document should request it from the docket section.

As discussed above, since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Moreover, the agency does not believe it is necessary to afford the public with notice and an opportunity to comment. The revisions in this document merely reflect statutory changes mandated by section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987. They require no interpretation and provide the agency with no discretion.

Because the agency is not required to publish a notice of proposed rulemaking regarding this rule, the agency is not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agency has nonetheless evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, no regulatory flexibility analysis is necessary.

The requirements in this rule that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria are considered to be information collection requirements as the term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through 11/30/92; OMB No. 2127–0501.

The Agency has also analyzed this action for the purpose of the National Environmental Policy Act. The Agency has determined that this action will not have any effect on the human environment.

Federalism Assessment

The Agency has analyzed this action under the principles and criteria of Executive Order 12612 and has determined that the rule does not have any federalism implications.

Effective Date

Because the amendments are not covered by the Administrative Procedure Act, and since they merely implement legislative changes and do not impose any additional requirements, the amendments are effective upon publication in the **Federal Register**.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Drug, Grant programs, Transportation, Highway safety.

PART 1313—[AMENDED]

In accordance with the foregoing, part 1313 of title 23 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1313 is revised to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

§ 1313.3 [Amended]

2. Section 1313.3(c) is amended by removing the word "all".

3. Section 1313.5(a)(1)(i)(F) is revised to read as follows: § 1313.5 Requirements for a basic grant.

(a) * * *

(1) * * *

(i) * * *

(F) The suspension and revocation referred to under paragraph (a)(1)(i)(E) of this section shall take effect not later than 15 days after the individual first received notice of the suspension or revocation.

4. Sections 1313.5(a)(1)(ii)(B) first sentence and 1313.5(a)(1)(iii)(A) first sentence are amended by removing the words "provide the administrative reviews and".

5. In Section 1313.5(a)(2)(i) the words "a significant portion of" are inserted before the words "the fines or surcharges collected" and the words "convicted of" are replaced with the phrase "apprehended and fined for".

6. In Section 1313.5(a)(2)(ii) and 1313.5(a)(2)(iii), in the first sentence the words "convicted of" are replaced with the phrase "apprehended and fined for" and in the third sentence the words "a significant portion of these" are inserted before the word "revenues" the first time it appears.

7. Section 1313.5(b) introductory text is amended by removing the words "the administrative review referred to under paragraph (a)(1)(i)(C) of this section shall take place and" and adding the word "shall" before the phrase "take effect".

8. Section 1313.5(b)(1)(i) second sentence is amended by removing the words "administrative review and".

9. Section 1313.5(b)(1)(ii) and 1313.5(b)(2)(i) is amended in the first sentence by removing the words "provide the administrative reviews and" in the fifth sentence of 1313.5(b)(1)(ii) and the fourth sentence of § 1313.5(b)(2)(i) by removing the phrase "administrative review and".

Issued on April 23, 1991.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 91–10193 Filed 4–25–91; 4:32 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–91–3077; FR–2938–N–03]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation for All Market Areas, Final Fair Market Rents; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final fair market rents; Correction.

SUMMARY: On April 24, 1991 (56 FR 18888), the Department published in the Federal Register, final Fair Market Rents (FMRs) for New Construction and Substantial Rehabilitation for all market areas. The effective date published in that document erroneously indicated that the final FMRs were to become effective on May 24, 1991, retroactive to September 15, 1989. The FMRs should

have been made effective on publication, retroactive to September 15, 1989. The purpose of this document is to correct the effective date for the final FMRs.

EFFECTIVE DATE: April 24, 1991, retroactive to September 15, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-0624. (This is not a toll-free number).

Accordingly, in FR Doc. 91-9566, published in the **Federal Register** on Wednesday, April 24, 1991 (56 FR 18888), correct the effective date to read, "**EFFECTIVE DATE:** April 24, 1991, retroactive to September 15, 1989."

Dated: April 24, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-10223 Filed 4-30-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8346]

RIN 1545-AH43

Like-kind Exchanges—Limitations on Deferred Exchanges; and Inapplicability of Section 1031 to Exchanges of Partnership Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to limitations on deferred exchanges under section 1031(a)(3) of the Internal Revenue Code of 1986 and to the inapplicability of section 1031 to exchanges of interests in a partnership under section 1031(a)(2)(D). The regulations provide the public with the guidance needed to comply with the Tax Reform Act of 1984 and 1986.

EFFECTIVE DATES: Sections 1.1031-0, 1.1031(b)-2 and 1.1031(k)-1 are effective for transfers of property made by taxpayers on or after June 10, 1991. The amendments to § 1.1031(a)-1 are effective for transfers of property made by taxpayers on or after April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn K. Nunzio, 202-343-2380, or Thomas E. Carter, 202-343-2382 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1990, the **Federal Register** published a notice of proposed rulemaking (IA-237-84) under section 1031 of the Internal Revenue Code. The notice proposed to add regulations relating to deferred exchanges and exchanges of partnership interests. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The Internal Revenue Service received public comments on the proposed regulations and held a public hearing on September 5, 1990. After full consideration of the public comments and statements regarding the proposed regulations, the Service adopts the proposed regulations as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below. A more complete explanation of the provisions common to the proposed and final regulations, and of the policy reasons underlying those provisions, is set forth in the preamble to the proposed regulations.

Deferred Exchanges

Exchanges in Which Receipt of Replacement Property Precedes Transfer of Relinquished Property

Section 1031(a)(3) of the Code and § 1.1031(a)-3 of the proposed regulations apply to deferred exchanges. The proposed regulations define a deferred exchange as an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receives property to be held either for productive use in a trade or business or for investment (the "replacement property"). The proposed regulations do not apply to transactions in which the taxpayer receives the replacement property prior to the date on which the taxpayer transfers the relinquished property (so-called "reverse-*Starker*" transactions). *See Starker* v. *United States*, 602 F.2d 1341 (9th Cir. 1979).

The Service requested comments on whether reverse-*Starker* transactions should qualify for tax-free exchange treatment under any provision of section 1031. The comments received ranged from advocating the application of the deferred exchange provisions of section 1031(a)(3) to these transactions to advising that these transactions should not qualify for tax-free exchange treatment under either the general rule set forth in section 1031(a)(1) or section 1031(a)(3). After reviewing the comments and applicable law, the Service has determined that the deferred exchange rules of section 1031(a)(3) do not apply to reverse-*Starker* transactions. Therefore, the final regulations, like the proposed regulations, do not apply to reverse-*Starker* transactions. However, the Service will continue to study the applicability of the general rule of section 1031(a)(1) to these transactions.

Identification and Receipt Requirements

In general

Section 1031(a)(3) provides that any property received by the taxpayer in a deferred exchange is treated as property that is not like-kind property if (a) the property is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange (the "identification period"), or (b) the property is received after the earlier of (1) the day that is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (2) the due date (including extensions) of the taxpayer's tax return for the taxable year in which the transfer of the relinquished property occurs (the "exchange period"). The proposed and final regulations provide additional guidance with respect to these requirements.

Application of section 7503

The proposed regulations provide that in determining the dates on which the identification and exchange periods end, section 7503 does not apply. Section 7503 provides that where the last day for performance falls on a Saturday, Sunday, or legal holiday, performance on the next succeeding day that is not a Saturday, Sunday, or legal holiday will be considered timely.

Some commentators suggested that the proposed regulations should be revised to provide that section 7503 does apply in determining the dates on which the identification and exchange periods end. However, Rev. Rul. 83-116, 1983-2 C.B. 264, provides that secion 7503 is limited to procedural acts required to be performed in connection with the determination, collection, or refund of taxes. Because it is unnecessary to state a special rule for the application of section 7503 to deferred exchanges, the provision regarding application of section 7503 to section 1031 deferred exchanges has been deleted from the

final regulations. In addition, because the timing requirements relating to the identification and exchange periods are statutory, requests for extension of the identification period or the exchange period through administrative relief under § 1.9100 will not be granted.

Identification of Alternative Properties

When section 1031(a)(3) was added to the Code in 1984, Congress was concerned that the greater the discretion a taxpayer has to vary the replacement property that will ultimately be received in a transaction, the more the transaction appears to be a sale rather than an exchange. *See* H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1232; Staff of Committee on Finance, 98th Cong., 2d Sess., Explanation of the Deficit Reduction Act of 1984 (Comm. Print 1984) at 242. On the other hand, a taxpayer may encounter practical difficulties in trying to identify with precision the replacement property that the taxpayer will ultimately receive. The identification rules provided by the proposed regulations balance these competing concerns in several ways. Under these rules, the maximum number of replacement properties that a taxpayer may identify is (a) three properties of any fair market value (the "3-property rule"), or (b) any number of properties as long as their aggregate fair market value as of the end of the identification period does not exceed 200 percent of the aggregate fair market value of all the relinquished properties (the "200-percent rule"). The proposed regulations also provide that the fair market value of property for purposes of the deferred exchange rules is the property's fair market value without regard to liabilities secured by the property.

Commentators suggested that both the 3-property rule and the 200-percent rule be expanded to give taxpayers more discretion in identifying replacement property in deferred exchanges. To do so, however, would give these transactions more of the character of sales rather than exchanges and therefore would be less consistent with congressional intent. Accordingly, these rules have not been changed in the final regulations.

Commentators also suggested that the fair market value of property for purposes of the 200-percent rule should be its fair market value less liabilities secured by the property (i.e., its net equity value). Use of net equity value would create practical problems, however, because the 200-percent rule is applied at the end of the identification period. At that time, a taxpayer may not know or be able to control unilaterally the amount of the liabilities to which the replacement property will be subject when that property is ultimately received. For this reason, the final regulations, like the proposed regulations, provide that for purposes of the deferred exchange rules the fair market value of property is determined without regard to liabilities secured by the property.

Rules Regarding Safe Harbors

In General

Because taxpayers typically are unwilling to rely on a transferee's unsecured promise to transfer the like-kind replacement property, the use of various guarantee or security arrangements is common in deferred exchanges. In addition, because persons who want to purchase the relinquished property may be unwilling or unable to acquire the replacement property, taxpayers often retain an intermediary to facilitate the exchange. Use of these arrangements, however, raises issues concerning actual receipt, constructive receipt, and agency.

Section 1031(a)(3) leaves unclear the application of the rules of actual and constructive receipt and the implications of the taxpayer's possible agency relationship with an intermediary in deferred exchange transactions. Therefore, the proposed regulations provide taxpayers with four safe harbors based on commonly used security, guarantee, and intermediary arrangements. The first safe harbor permits certain security arrangements. The second permits the use of a qualified escrow account or a qualified trust. The third permits the use of a qualified intermediary, and the fourth permits the taxpayer to receive interest or a growth factor to compensate for the time value of money during the period between transfer of the relinquished property and receipt of the replacement property. Use of these safe harbors will result in a determination that the taxpayer is not, either directly or through an intermediary that may be an agent, in actual or constructive receipt of money or other property for purposes of these regulations. The final regulations retain these four safe harbors, but with certain modifications and clarifications.

Rights to Money or Other Property Outside of Safe Harbors

Under the proposed regulations, the safe harbors generally apply only if the taxpayer has no right to receive, pledge, borrow, or otherwise obtain the benefits of the funds or interest in escrow or trust or held by an intermediary before the occurrence of certain enumerated circumstances. The final regulations clarify that the limitations on a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the funds apply only to the money or other property in a qualified escrow account or qualified trust, or held by the qualified intermediary. Under the final regulations, a taxpayer may receive money or other property directly from another party to the transaction, but not from a qualified escrow account, a qualified trust, or a qualified intermediary, without affecting the application of a safe harbor.

Rights Under State Law to Money or Other Property

Some commentators expressed concern that, as a result of certain rights under state law, a taxpayer may be treated as having the immediate right to receive money or other property in an escrow or trust or held by a qualified intermediary. For example, commentators questioned whether a taxpayer would be treated as having the immediate right to receive money or other property held by an intermediary if, under state agency law, the intermediary is the agent of the taxpayer and the taxpayer has the right to dismiss an agent and thereby obtain property held for the taxpayer by the agent.

To assure taxpayers who use the safe harbors that the federal tax treatment of deferred exchanges is not intended to be dependent in this respect upon state law, the final regulations clarify that the terms of the applicable agreement, rather than state law, will determine whether the limitations imposed by a safe harbor with respect to a taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefit of money or other property are satisfied. Thus, the safe harbors require that the applicable agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property before the end of the exchange period. The applicable agreement may, but need not, give a taxpayer rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property before the end of the exchange period if the exchange is completed or the requirements of section 1031(a)(3) can no longer be met.

The final regulations also provide that rights conferred upon a taxpayer under state agency law to dismiss an escrow holder, trustee, or intermediary will be disregarded in determining whether the taxpayer has the ability to receive or otherwise obtain the benefits of money

or other property held by the escrow holder, trustee, or intermediary. Actual or constructive receipt necessarily will occur at the time the taxpayer exercises these rights.

Special Rule for Certain Acquisition and Closing Costs

Commentators pointed out that funds in a qualified escrow account or qualified trust, or held by a qualified intermediary, may be needed to pay closing costs for which the taxpayer is responsible. The taxpayer is in receipt of the funds to the extent the funds are used to pay the taxpayer's closing costs. Commentators questioned whether paying closing costs out of these funds also results in actual or constructive receipt of the remaining funds. The final regulations provide that the use of money or other property in a qualified escrow account or qualified trust, or held by a qualified intermediary, to pay certain specified items will not result in actual or constructive receipt of the remaining funds and, furthermore, will be disregarded in determining whether the applicable agreement properly limits the taxpayer's rights to receive, borrow, pledge, or otherwise obtain the benefits of money or other property. The specified items are transactional items that (a) relate to the disposition of the relinquished property or to the acquisition of the replacement property and (b) are listed as the responsibility of a buyer or seller in the typical closing statement under local standards. Examples of these transactional items include commissions, prorated taxes, recording or transfer taxes, and title company fees. In addition, under the final regulations, a taxpayer's rights to receive items (such as prorated rents) that a seller may receive as a consequence of the disposition of property and that are not included in the amount realized from the disposition of property are disregarded.

Definition of Qualified Intermediary

Under the proposed regulations, a qualified intermediary is defined as a person who is not the taxpayer or a related party and who acts to facilitate a deferred exchange by entering into an agreement with the taxpayer for the exchange of properties. The proposed regulations also require that the qualified intermediary acquire the relinquished property from the taxpayer, acquire the replacement property, and transfer the replacement property to the taxpayer. The final regulations provide that the qualified intermediary must also transfer the relinquished property.

Commentators requested clarification as to what an intermediary must do to acquire property. In response, the final regulations describe limited circumstances under which an intermediary is treated as acquiring and transferring property regardless of whether, under general tax principles, the intermediary actually acquires and transfers the property. First, an intermediary is treated as acquiring and transferring property if the intermediary acquires and transfers legal title to that property. In addition, an intermediary is treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the relinquished property to that person and, pursuant to that agreement, the relinquished property is transferred to that person. Finally, an intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer. Solely for these purposes, an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevant transfer of property.

Definition of "Related Party"

Under the proposed regulations, a party that is related to the taxpayer cannot be the escrow holder of a qualified escrow account, the trustee of a qualified trust, or a qualified intermediary. The proposed regulations define a person as a related party if: (i) The person and the taxpayer bear a relationship described in section 267(b) or section 707(b) (applied by substituting in each section "10 percent" for "50 percent" each place it appears); (ii) the person acts as the taxpayer's agent (including, for example, by performing services as the taxpayer's employee, attorney, or broker); or (iii) the person and a person who acts as the taxpayer's agent bear a relationship described in section 267(b) or 707(b) (again, substituting in each section "10 percent" for "50 percent" each place it appears). The proposed regulations further provide that, in determining whether a person acts as the taxpayer's agent, the performance of services with respect to exchanges intended to qualify under section 1031 and the performance of routine financial services by a financial institution are not taken into account.

Commentators suggested several changes to the above definition of related party. They pointed out that the term "related party" as used in the proposed regulations is defined differently than the term "related person" as used in section 1031(f). To avoid confusion, they suggested using the section 1031(f) definition. The Services believes that the section 1031(f) related person definition is too narrow for purposes of the safe harbors contained in the deferred exchange regulations. To alleviate any potential confusion, the final regulations substitute the term "disqualified person" for the term "related party."

Commenters also asked for clarification regarding when certain persons, such as attorneys, would be treated as acting as a taxpayer's agent. In this regard, commentators suggested that a person who has not recently acted as the taxpayer's agent should not be disqualified from performing exchange-related services for the taxpayer. Finally, commentators requested that the status of title insurance companies, escrow companies, and certain other persons be clarified.

The final regulations have been revised to address these concerns. Under the final regulations, a person is a disqualified person if: (i) The person is an agent of the taxpayer at the time of the transaction; (ii) the person and the taxpayer bear a relationship described in section 267(b) or section 707(b) (applied by substituting "10 percent" for "50 percent" each time it appears in those sections); or (iii) the person and a person who is an agent of the taxpayer at the time of the transaction bear a relationship described in section 267(b) or 707(b) (again, substituting "10 percent" for "50 percent" in applying those sections). A person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction.

In addition, the final regulations broaden somewhat the services that are disregarded for purposes of determining if an agency relationship exists. In determining whether a person is an agent of the taxpayer or has acted within the preceding 2-year period as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker, the performance of services with respect

to exchanges intended to qualify under section 1031 is not taken into account. Furthermore, for these purposes, the performance of routine financial, title insurance, escrow, or trust services by a financial institution, title insurance company, or escrow company is not taken into account.

Extension of Safe Harbor Rules to Simultaneous Exchanges

The rules in the proposed regulations, including the safe harbors, apply only to deferred exchanges. Commentators noted that the concerns relating to actual or constructive receipt and agency also exist in the case of simultaneous exchanges. They requested that the safe harbors be made available for simultaneous exchanges. Upon review, the Service has determined it necessary to make only the qualified intermediary safe harbor available for simultaneous exchanges.

The final regulations provide, therefore, that in the case of simultaneous transfers of like-kind properties involving a qualified intermediary, the qualified intermediary will not be considered the agent of the taxpayer for purposes of section 1031(a). Thus, in such a case the transfer and receipt of property by the taxpayer will be treated as an exchange. This provision is set forth in new § 1.1031(b)–2 of the final regulations and is effective for transfers of property made by taxpayers on or after June 10, 1991.

Application of Section 468B(g) Rules Regarding Interest

Section 468B(g) provides that nothing in any provision of law will be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. It also directs the Secretary to prescribe regulations relating to the taxation of these accounts or funds whether as a grantor trust or otherwise.

The fourth safe harbor provided by the proposed regulations permits taxpayers to receive interest or a growth factor with respect to the deferred exchange, provided that the taxpayer's rights to receive the interest or growth factor are limited to certain specified circumstances. Although the proposed regulations require the interest or growth factor to be treated as interest, regardless of whether it is paid in cash or in property, they do not address the proper manner for reporting interest income earned on money held in an escrow account or trust. Comments were requested concerning whether the Service should exercise its regulatory authority under section 468B(g) with respect to interest earned on escrow accounts and trusts used in deferred exchanges.

After considering the comments on this issue, the Service has concluded that guidance on interest reporting should be provided not in piecemeal fashion under a number of Code sections, but rather in general, comprehensive regulations issued under section 468B(g). Accordingly, the final regulations do not address this issue. Guidance will be published in regulations under section 468B(g).

Coordination with Section 453 Installment Sale Rules

The section of the proposed regulations that coordinates the deferred exchange rules and the installment sale rules is reserved. Commentators suggested that this issue should be addressed in the near future because the two sets of rules often apply to the same transactions. The Service agrees this issue merits prompt attention. The issue remains reserved in the final regulations but will be addressed in forthcoming proposed regulations.

Effective Date Relating to Deferred Exchange Provisions

Section 1.1031(k)–1 of the final regulations applies to transfers of property made by taxpayers on or after June 10, 1991. Transfers of property made by taxpayers after May 16, 1990, but before June 10, 1991, will be treated as complying with section 1031(a)(3) and this section if either the provisions of this section or the provisions of the notice of proposed rulemaking published in the **Federal Register** on May 16, 1990 (55 FR 20278) are satisfied.

Exchanges of Partnership Interests

In General

Section 1031(a)(2)(D) provides that section 1031(a) does not apply to any exchange of interests in a partnership. The Service requested comments on whether an exchange of an interest in an organization which has elected under section 761(a) to be excluded from the application of subchapter K is eligible for nonrecognition of gain or loss under section 1031(a).

Section 11703(d) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–503, amended section 1031(a)(2) to provide that an interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K is treated for purposes of section 1031 as an interest in each of the assets of the partnership and not as an interest in a partnership. The final regulations have been revised to reflect the amendment to section 1031(a)(2).

The final regulations otherwise retain the provisions of the proposed regulations regarding exchanges of interests in a partnership. Under the proposed and final regulations, an exchange of partnership interests will not qualify for nonrecognition of gain or loss under section 1031(a) regardless of whether the interests exchanged are general or limited partnership interests or are interests in the same partnership or different partnerships. No inference is to be drawn from these regulations, however, with respect to the application of other Code sections that allow nonrecognition of gain of loss in an exchange of interests in a partnership. For example, as stated in the preamble to the proposed regulations, these regulations are not intended to affect the applicability of Rev. Rul. 84–52, 1984–1 C.B. 157, concerning conversions of partnership interests. More generally, the regulations are not intended to restrict in any way the application of the rules of subchapter K of the Code to exchanges of partnership interests.

Effective Date Relating to Exchanges of Partnership Interests

The amendments to § 1.1031(a)–1 made in the final regulations with respect to exchanges of partnership interests are effective for transfers of property made by taxpayers on or after April 25, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is D. Lindsay Russell of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.1031(a)–1 through 1.1042–1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. A new § 1.1031–0 is added to read as follows:

§ 1.1031–0 Table of contents.

This section lists the captions that appear in the regulations under section 1031.

§ 1.1031(a)–1 Property held for productive use in a trade or business or for investment.

(a) In general.
(b) Definition of "like kind."
(c) Examples of exchanges of property of a "like kind."
(d) Examples of exchanges not solely in kind.
(e) Effective date.

§ 1.1031(a)–2 Additional rules for exchanges of personal property.

(a) Introduction.
(b) Depreciable tangible personal property.
(c) Intangible personal property and nondepreciable personal property.

§ 1.1031(b)–1 Receipt of other property or money in tax-free exchange.

§ 1.1031(b)–2 Safe harbor for qualified intermediaries.

§ 1.1031(c)–1 Nonrecognition of loss.

§ 1.1031(d)–1 Property acquired upon a tax-free exchange.

§ 1.1031(d)–1T Coordination of section 1060 with section 1031 (temporary).

§ 1.1031(d)–2 Treatment of assumption of liabilities.

§ 1.1031(e)–1 Exchanges of livestock of different sexes.

§ 1.1031(j)–1 Exchanges of multiple properties.

(a) Introduction.
(b) Computation of gain recognized.
(c) Computation of basis of properties received.
(d) Examples.
(e) Effective date.

§ 1.1031(K)–1 Treatment of deferred exchanges.

(a) Overview.
(b) Identification and receipt requirements.
(c) Identification of replacement property before the end of the identification period.
(d) Receipt of identified replacement property.
(e) Special rules for identification and receipt of replacement property to be produced.
(f) Receipt of money or other property.
(g) Safe harbors.
(h) Interest and growth factors.
(i) [Reserved]
(j) Determination of gain or loss recognized and the basis of property received in a deferred exchange.
(k) Definition of disqualified person.
(l) [Reserved]
(m) Definition of fair market value.
(n) No inference with respect to actual or constructive receipt rules outside of section 1031.
(o) Effective date.

Par. 3. Section 1.1031(a)–1 is amended by adding headings for paragraphs (a), (b), (c), and (d), by revising paragraph (a), and by adding paragraph (e) to read as follows:

§ 1.1031(a)–1 Property held for productive use in a trade or business or for investment.

(a) *In general*—(1) *Exchanges of property solely for property of a like kind.* Section 1031(a)(1) provides an exception from the general rule requiring the recognition of gain or loss upon the sale or exchange of property. Under section 1031(a)(1), no gain or loss is recognized if property held for productive use in a trade or business or for investment is exchanged solely for property of a like kind to be held either for productive use in a trade or business or for investment. Under section 1031(a)(1), property held for productive use in a trade or business may be exchanged for property held for investment. Similarly, under section 1031(a)(1), property held for investment may be exchanged for property held for productive use in a trade or business. However, section 1031(a)(2) provides that section 1031(a)(1) does not apply to any exchange of—

(i) Stock in trade or other property held primarily for sale;
(ii) Stocks, bonds, or notes;
(iii) Other securities or evidences of indebtedness or interest;
(iv) Interests in a partnership;
(v) Certificates of trust or beneficial interests; or
(vi) Choses in action.

Section 1031(a)(1) does not apply to any exchange of interests in a partnership regardless of whether the interests exchanged are general or limited partnership interests or are interests in the same partnership or in different partnerships. An interest in a partnership that has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K is treated as an interest in each of the assets of the partnership and not as an interest in a partnership for purposes of section 1031(a)(2)(D) and paragraph (a)(1)(iv) of this section. An exchange of an interest in such a partnership does not qualify for nonrecognition of gain or loss under section 1031 with respect to any asset of the partnership that is described in section 1031(a)(2) or to the extent the exchange of assets of the partnership does not otherwise satisfy the requirements of section 1031(a).

(2) *Exchanges of property not solely for property of a like kind.* A transfer is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or property which does not meet the requirements of section 1031(a), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). Similarly, a transfer is not within the provisions of section 1031(a) if, as part of the consideration, the other party to the exchange assumes a liability of the taxpayer (or acquires property from the taxpayer that is subject to a liability), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). A transfer of property meeting the requirements of section 1031(a) may be within the provisions of section 1031(a) even though the taxpayer transfers in addition property not meeting the requirements of section 1031(a) or money. However, the nonrecognition treatment provided by section 1031(a) does not apply to the property transferred which does not meet the requirements of section 1031(a).

(b) *Definition of "like kind."* * * *

(c) *Examples of exchanges of property of a "like kind."* * * *

(d) *Examples of exchanges not solely in kind.* * * *

(e) *Effective date relating to exchanges of partnership interests.* The provisions of paragraph (a)(1) of this section relating to exchanges of partnership interests apply to transfers of property made by taxpayers on or after April 25, 1991.

Par. 3a. A new § 1.1031(b)–2 is added to read as follows:

§ 1.1031(b)–2 Safe harbor for qualified intermediaries.

(a) In the case of simultaneous transfers of like-kind properties involving a qualified intermediary (as defined in § 1.1031(k)–1(g)(4)(iii)), the qualified intermediary is not considered the agent of the taxpayer for purposes of

section 1031(a). In such a case, the transfer and receipt of property by the taxpayer is treated as an exchange.

(b) This section applies to transfers of property made by taxpayers on or after June 10, 1991.

Par. 4. A new § 1.1031(k)–1 is added to read as follows:

§ 1.1031(k)–1 Treatment of deferred exchanges.

(a) *Overview.* This section provides rules for the application of section 1031 and the regulations thereunder in the case of a "deferred exchange." For purposes of section 1031 and this section, a deferred exchange is defined as an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receives property to be held either for productive use in a trade or business or for investment (the "replacement property"). In the case of a deferred exchange, if the requirements set forth in paragraphs (b), (c), and (d) of this section (relating to identification and receipt of replacement property) are not satisfied, the replacement property received by the taxpayer will be treated as property which is not of a like kind to the relinquished property. In order to constitute a deferred exchange, the transaction must be an exchange (i.e., a transfer of property for property, as distinguished from a transfer of property for money). For example, a sale of property followed by a purchase of property of a like kind does not qualify for nonrecognition of gain or loss under section 1031 regardless of whether the identification and receipt requirements of section 1031(a)(3) and paragraphs (b), (c), and (d) of this section are satisfied. The transfer of relinquished property in a deferred exchange is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or property which does not meet the requirements of section 1031(a), but the transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). See § 1.1031(a)–1(a)(2). In addition, in the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or property which does not meet the requirements of section 1031(a) before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or property which does not meet the requirements of section 1031(a) in the full amount of the consideration for the relinquished property, the transaction will constitute a sale, and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property. For purposes of this section, property which does not meet the requirements of section 1031(a) (whether by being described in section 1031(a)(2) or otherwise) is referred to as "other property." For rules regarding actual and constructive receipt, and safe harbors therefrom, see paragraphs (f) and (g), respectively, of this section. For rules regarding the determination of gain or loss recognized and the basis of property received in a deferred exchange, see paragraph (j) of this section.

(b) *Identification and receipt requirements*—(1) *In general.* In the case of a deferred exchange, any replacement property received by the taxpayer will be treated as property which is not of a like kind to the relinquished property if—

(i) The replacement property is not "identified" before the end of the "identification period," or

(ii) The identified replacement property is not received before the end of the "exchange period."

(2) *Identification period and exchange period.* (i) The identification period begins on the date the taxpayer transfers the relinquished property and ends at midnight on the 45th day thereafter.

(ii) The exchange period begins on the date the taxpayer transfers the relinquished property and ends at midnight on the earlier of the 180th day thereafter or the due date (including extensions) for the taxpayer's return of the tax imposed by chapter 1 of subtitle A of the Code for the taxable year in which the transfer of the relinquished property occurs.

(iii) If, as part of the same deferred exchange, the taxpayer transfers more than one relinquished property and the relinquished properties are transferred on different dates, the identification period and the exchange period are determined by reference to the earliest date on which any of the properties are transferred.

(iv) For purposes of this paragraph (b)(2), property is transferred when the property is disposed of within the meaning of section 1001(a).

(3) *Example.* This paragraph (b) may be illustrated by the following example.

Example. (i) M is a corporation that files its Federal income tax return on a calendar year basis. M and C enter into an agreement for an exchange of property that requires M to transfer property X to C. Under the agreement, M is to identify like-kind replacement property which C is required to purchase and to transfer to M. M transfers property X to C on November 16, 1992.

(ii) The identification period ends at midnight on December 31, 1992, the day which is 45 days after the date of transfer of property X. The exchange period ends at midnight on March 15, 1993, the due date for M's Federal income tax return for the taxable year in which M transferred property X. However, if M is allowed the automatic six-month extension for filing its tax return, the exchange period ends at midnight on May 15, 1993, the day which is 180 days after the date of transfer of property X.

(c) *Identification of replacement property before the end of the identification period*—(1) *In general.* For purposes of paragraph (b)(1)(i) of this section (relating to the identification requirement), replacement property is identified before the end of the identification period only if the requirements of this paragraph (c) are satisfied with respect to the replacement property. However, any replacement property that is received by the taxpayer before the end of the identification period will in all events be treated as identified before the end of the identification period.

(2) *Manner of identifying replacement property.* Replacement property is identified only if it is designated as replacement property in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or otherwise sent before the end of the identification period to either—

(i) The person obligated to transfer the replacement property to the taxpayer (regardless of whether that person is a disqualified person as defined in paragraph (k) of this section); or

(ii) Any other person involved in the exchange other than the taxpayer or a disqualified person (as defined in paragraph (k) of this section).

Examples of persons involved in the exchange include any of the parties to the exchange, an intermediary, an escrow agent, and a title company. An identification of replacement property made in a written agreement for the exchange of properties signed by all parties thereto before the end of the identification period will be treated as satisfying the requirements of this paragraph (c)(2).

(3) *Description of replacement property.* Replacement property is identified only if it is unambiguously described in the written document or agreement. Real property generally is unambiguously described if it is described by a legal description, street address, or distinguishable name (e.g., the Mayfair Apartment Building). Personal property generally is unambiguously described if it is

described by a specific description of the particular type of property. For example, a truck generally is unambigously described if it is described by a specific make, model, and year.

(4) *Alternative and multiple properties.* (i) The taxpayer may identify more than one replacement property. Regardless of the number of relinguished properties transferred by the taxpayer as part of the same deferred exchange, the maximum number of replacement properties that the taxpayer may identify is—

(A) Three properties without regard to the fair market values of the properties (the "3-property rule"), or

(B) Any number of properties as long as their aggregate fair market value as of the end of the identification period does not exceed 200 percent of the aggregate fair market value of all the relinguished properties as of the date the relinguished properties were transferred by the taxpayer (the "200-percent rule").

(ii) If, as of the end of the identification period, the taxpayer has identified more properties as replacement properties than permitted by paragraph (c)(4)(i) of this section, the taxpayer is treated as if no replacement property had been identified. The preceding sentence will not apply, however, and an identification satisfying the requirements of paragraph (c)(4)(i) of this section will be considered made, with respect to—

(A) Any replacement property received by the taxpayer before the end of the identification period, and

(B) Any replacement property identified before the end of the identification period and received before the end of the exchange period, but only if the taxpayer receives before the end of the exchange period identified replacement property the fair market vlaue of which is at least 95 percent of the aggregate fair market value of all identified replacement properties (the "95-percent rule"). For this purpose, the fair market value of each identified replacement property is determined as of the earlier of the date the property is received by the taxpayer or the last day of the exchange period.

(iii) For purposes of applying the 3-property rule, the 200-percent rule, and the 95-percent rule, all identifications of replacement property, other than identifications of replacement property that have been revoked in the manner provided in paragraph (c)(6) of this section, are taken into account. For example, if, in a deferred exchange, B transfers property X with a fair market value of $100,000 to C and B receives like-kind property Y with a fair market value of $50,000 before the end of the identification period, under paragraph (c)(1) of this section, property Y is treated as identified by reason of being received before the end of the identification period. Thus, under paragraph (c)(4)(i) of this section, B may identify either two additional replacement properties of any fair market value or any number of additional replacement properties as long as the aggregate fair market value of the additional replacement properties does not exceed $150,000.

(5) *Incidental property disregarded.* (i) Solely for purposes of applying this paragraph (c), property that is incidental to a larger item of property is not treated as property that is separate from the larger item of property. Property is incidental to a larger item of property if—

(A) In standard commercial transactions, the property is typically transferred together with the larger item of property, and

(B) The aggregate fair market value of all of the incidental property does not exceed 15 percent of the aggregate fair market value of the larger item of property.

(ii) This paragraph (c)(5) may be illustrated by the following examples.

Example 1. For purposes of paragraph (c) of this section, a spare tire and tool kit will not be treated as separate property from a truck with a fair market value of $10,000, if the aggregate fair market value of the spare tire and tool kit does not exceed $1,500. For purposes of the 3-property rule, the truck, spare tire, and tool kit are treated as 1 property. Moreover, for purposes of paragraph (c)(3) of this section (relating to the description of replacement property), the truck, spare tire, and tool kit are all considered to be unambiguously described if the make, model, and year of the truck are specified, even if no reference is made to the spare tire and tool kit.

Example 2. For purposes of paragraph (c) of this section, furniture, laundry machines, and other miscellaneous items of personal property will not be treated as separate property from an apartment building with a fair market value of $1,000,000, if the aggregate fair market value of the furniture, laundry machines, and other personal property does not exceed $150,000. For purposes of the 3-property rule, the apartment building, furniture, laundry machines, and other personal property are treated as 1 property. Moreover, for purposes of paragraph (c)(3) of this section (relating to the description of replacement property), the apartment building, furniture, laundry machines, and other personal property are all considered to be unambiguously described if the legal description, street address, or distinguishable name of the apartment building is specified, even if no reference is made to the furniture, laundry machines, and other personal property.

(6) *Revocation of identification.* An identification of replacement property may be revoked at any time before the end of the identification period. An identification of replacement property is revoked only if the revocation is made in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or othewise sent before the end of the identification period to the person to whom the identification of the replacement property was sent. An identification of replacement property that is made in a written agreement for the exchange of properties is treated as revoked only if the revocation is made in a written amendment to the agreement or in a written document signed by the taxpayer and hand delivered, mailed, telecopied, or othewise sent before the end of the identification period to all of the parties to the agreement.

(7) *Examples.* This paragraph (c) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. No replacement property is identified in the agreement. When subsequently identified, the replacement property is described by legal description and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold the replacement property received for investment.

Example 1. (i) On July 2, 1991, B identifies real property E as replacement property by designating real property E as replacement property in a written document signed by B and personally delivered to C.

(ii) Because the identification was made after the end of the identification period,

pursuant to paragraph (b)(1)(i) of this section (relating to the identification requirement), real property E is treated as property which is not of a like kind to real property X.

Example 2. (i) C is a corporation of which 20 percent of the outstanding stock is owned by B. On July 1, 1991, B identifies real property F as replacement property by designating real property F as replacement property in a written document signed by B and mailed to C.

(ii) Because C is the person obligated to transfer the replacement property to B, real property F is identified before the end of the identification period. The fact that C is a "disqualified person" as defined in paragraph (k) of this section does not change this result.

(iii) Real property F would also have been treated as identified before the end of the identification period if, instead of sending the identification to C, B had designated real property F as replacement property in a written agreement for the exchange of properties signed by all parties thereto on or before July 1, 1991.

Example 3. (i) On June 3, 1991, B identifies the replacement property as "unimproved land located in Hood County with a fair market value not to exceed $100,000." The designation is made in a written document signed by B and personally delivered to C. On July 8, 1991, B and C agree that real property G is the property described in the June 3, 1991 document.

(ii) Because real property G was not unambiguously described before the end of the identification period, no replacement property is identified before the end of the identification period.

Example 4. (i) On June 28, 1991, B identifies real properties H, J, and K as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. The written document provides that by August 1, 1991, B will orally inform C which of the identified properties C is to transfer to B. As of July 1, 1991, the fair market values of real properties H, J, and K are $75,000, $100,000, and $125,000, respectively.

(ii) Because B did not identify more than three properties as replacement properties, the requirements of the 3-property rule are satisfied, and real properties H, J, and K are all identified before the end of the identification period.

Example 5. (i) On May 17, 1991, B identifies real properties L, M, N, and P as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. The written document provides that by July 2, 1991, B will orally inform C which of the identified properties C is to transfer to B. As of July 1, 1991, the fair market values of real properties L, M, N, and P are $30,000, $40,000, $50,000, and $60,000, respectively.

(ii) Although B identified more than three properties as replacement properties, the aggregate fair market value of the identified properties as of the end of the identification period ($180,000) did not exceed 200 percent of the aggregate fair market value of real property X (200% × $100,000 = $200,000). Therefore, the requirements of the 200-percent rule are satisfied, and real properties L, M, N, and P are all identified before the end of the identification period.

Example 6. (i) On June 21, 1991, B identifies real properties Q, R, and S as replacement properties by designating these properties as replacement properties in a written document signed by B and mailed to C. On June 24, 1991, B identifies real properties T and U as replacement properties in a written document signed by B and mailed to C. On June 28, 1991, B revokes the identification of real properties Q and R in a written document signed by B and personally delivered to C.

(ii) B has revoked the identification of real properties Q and R in the manner provided by paragraph (c)(6) of this section. Identifications of replacement property that have been revoked in the manner provided by paragraph (c)(6) of this section are not taken into account for purposes of applying the 3-property rule. Thus, as of June 28, 1991, B has identified only replacement properties S, T, and U for purposes of the 3-property rule. Because B did not identify more than three properties as replacement properties for purposes of the 3-property rule, the requirements of that rule are satisfied, and real properties S, T, and U are all identified before the end of the identification period.

Example 7. (i) On May 20, 1991, B identifies real properties V and W as replacement properties by designating these properties as replacement properties in a written document signed by B and personally delivered to C. On June 4, 1991, B identifies real properties Y and Z as replacement properties in the same manner. On June 5, 1991, B telephones C and orally revokes the identification of real properties V and W. As of July 1, 1991, the fair market values of real properties V, W, Y, and Z are $50,000, $70,000, $90,000, and $100,000, respectively. On July 31, 1991, C purchases real property Y and Z and transfers them to B.

(ii) Pursuant to paragraph (c)(6) of this section (relating to revocation of identification), the oral revocation of the identification of real properties V and W is invalid. Thus, the identification of real properties V and W is taken into account for purposes of determining whether the requirements of paragraph (c)(4) of this section (relating to the identification of alternative and multiple properties) are satisfied. Because B identified more than three properties and the aggregate fair market value of the identified properties as of the end of the identification period ($310,000) exceeds 200 percent of the fair market value of real property X (200% × $100,000 = $200,000), the requirements of paragraph (c)(4) of this section are not satisfied, and B is treated as if B did not identify any replacement property.

(d) *Receipt of identified replacement property*—(1) *In general.* For purposes of paragraph (b)(1)(ii) of this section (relating to the receipt requirement), the identified replacement property is received before the end of the exchange period only if the requriements of this paragraph (d) are satisfied with respect to the replacement property. In the case of a deferred exchange, the identified replacement property is received before the end of the exchange period if—

(i) The taxpayer receives the replacement property before the end of the exchange period, and

(ii) The replacement property received is substantially the same property as identified.

If the taxpayer has identified more than one replacement property, section 1031(a)(3)(B) and this paragraph (d) are applied separately to each replacement property.

(2) *Examples.* This paragraph (d) may be illustrated by the following examples. The following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. The replacement property is identified in a manner that satisfies paragraph (c) of this section (relating to identification of replacement property) and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) In the agreement, B identifies real properties J, K, and L as replacement properties. The agreement provides that by July 26, 1991, B will orally inform C which of the properties C is to transfer to B.

(ii) As of July 1, 1991, the fair market values of real properties J, K, and L are $75,000, $100,000, and $125,000, respectively. On July 26, 1991, B instructs C to acquire real property K. On October 31, 1991, C purchases real property K for $100,000 and transfers the property to B.

(iii) Because real property K was identified before the end of the identification period and was received before the end of the exchange period, the identification and receipt requirements of section 1031(a)(3) and this section are satisfied with respect to real property K.

Example 2. (i) In the agreement, B identifies real property P as replacement property. Real property P consists of two acres of

unimproved land. On October 15, 1991, the owner of real property P erects a fence on the property. On November 1, 1991, C purchases real property P and transfers it to B.

(ii) The erection of the fence on real property P subsequent to its identification did not alter the basic nature or character of real property P as unimproved land. B is considered to have received substantially the same property as identified.

Example 3. (i) In the agreement, B identifies real property Q as replacement property. Real property Q consists of a barn on two acres of land and has a fair market value of $250,000 ($187,500 for the barn and underlying land and $87,500 for the remaining land). As of July 26, 1991, real property Q remains unchanged and has a fair market value of $250,000. On that date, at B's direction, C purchases the barn and underlying land for $187,500 and transfers it to B, and B pays $87,500 to C.

(ii) The barn and underlying land differ in basic nature or character from real property Q as a whole, B is not considered to have received substantially the same property as identified.

Example 4. (i) In the agreement, B identifies real property R as replacement property. Real property R consists of two acres of unimproved land and has a fair market value of $250,000. As of October 3, 1991, real property R remains unimproved and has a fair market value of $250,000. On that date, at B's direction, C purchases 1½ acres of real property R for $187,500 and transfers it to B, and B pays $87,500 to C.

(ii) The portion of real property R that B received does not differ from the basic nature or character of real property R as a whole. Moreover, the fair market value of the portion of real property R that B received ($187,500) is 75 percent of the fair market value of real property R as of the date of receipt. Accordingly, B is considered to have received substantially the same property as identified.

(e) *Special rules for identification and receipt of replacement property to be produced*—(1) *In general.* A transfer of relinquished property in a deferred exchange will not fail to qualify for nonrecognition of gain or loss under section 1031 merely because the replacement property is not in existence or is being produced at the time the property is identified as replacement property. For purposes of this paragraph (e), the terms "produced" and "production" have the same meanings as provided in section 263A(g)(1) and the regulations thereunder.

(2) *Identification of replacement property to be produced.* (i) In the case of replacement property that is to be produced, the replacement property must be identified as provided in paragraph (c) of this section (relating to identification of replacement property). For example, if the identified replacement property consists of improved real property where the improvements are to be constructed, the description of the replacement property satisfies the requirements of paragraph (c)(3) of this section (relating to description of replacement property) if a legal description is provided for the underlying land and as much detail is provided regarding construction of the improvements as is practicable at the time the identification is made.

(ii) For purposes of paragraphs (c)(4)(i)(B) and (c)(5) of this section (relating to the 200-percent rule and incidental property), the fair market value of replacement property that is to be produced is its estimated fair market value as of the date it is expected to be received by the taxpayer.

(3) *Receipt of replacement property to be produced.* (i) For purposes of paragraph (d)(1)(ii) of this section (relating to receipt of the identified replacement property), in determining whether the replacement property received by the taxpayer is substantially the same property as identified where the identified replacement property is property to be produced, variations due to usual or typical production changes are not taken into account. However, if substantial changes are made in the property to be produced, the replacement property received will not be considered to be substantially the same property as identified.

(ii) If the identified replacement property is personal property to be produced, the replacement property received will not be considered to be substantially the same property as identified unless production of the replacement property received is completed on or before the date the property is received by the taxpayer.

(iii) If the identified replacement property is real property to be produced and the production of the property is not completed on or before the date the taxpayer receives the property, the property received will be considered to be substantially the same property as identified only if, had production been completed on or before the date the taxpayer receives the replacement property, the property received would have been considered to be substantially the same property as identified. Even so, the property received is considered to be substantially the same property as identified only to the extent the property received constitutes real property under local law.

(4) *Additional rules.* The transfer of relinquished property is not within the provisions of section 1031(a) if the relinquished property is transferred in exchange for services (including production services). Thus, any additional production occurring with respect to the replacement property after the property is received by the taxpayer will not be treated as the receipt of property of a like kind.

(5) *Example.* This paragraph (e) may be illustrated by the following example.

Example. (i) B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B transfers improved real property X and personal property Y to C on May 17, 1991. On or before November 13, 1991 (the end of the exchange period), C is required to transfer to B real property M, on which C is constructing improvements, and personal property N, which C is producing. C is obligated to complete the improvements and production regardless of when properties M and N are transferred to B. Properties M and N are identified in a manner that satisfies paragraphs (c) (relating to identification of replacement property) and (e)(2) of this section. In addition, properties M and N are of a like kind, respectively, to real property X and personal property Y (determined without regard to section 1031(a)(3) and this section). On November 13, 1991, when construction of the improvements to property M is 20 percent completed and the production of property N is 90 percent completed, C transfers to B property M and property N. If construction of the improvements had been completed, property M would have been considered to be substantially the same property as identified. Under local law, property M constitutes real property to the extent of the underlying land and the 20 percent of the construction that is completed.

(ii) Because property N is personal property to be produced and production of property N is not completed before the date the property is received by B, property N is not considered to be substantially the same property as identified and is treated as property which is not of a like kind to property Y.

(iii) Property M is considered to be substantially the same property as identified to the extent of the underlying land and the 20 percent of the construction that is completed when property M is received by B. However, any additional construction performed by C with respect to property M after November 13, 1991, is not treated as the receipt of property of a like kind.

(f) *Receipt of money or other property*—(1) *In general.* A transfer of relinquished property in a deferred exchange is not within the provisions of section 1031(a) if, as part of the consideration, the taxpayer receives money or other property. However, such a transfer, if otherwise qualified, will be within the provisions of either section 1031 (b) or (c). See § 1031(a)-1(a)(2). In addition, in the case of a transfer of relinquished property in a deferred exchange, gain or loss may be recognized if the taxpayer actually or constructively receives money or other property before the taxpayer actually receives like-kind replacement property. If the taxpayer actually or constructively receives money or other property in the

full amount of the consideration for the relinquished property before the taxpayer actually receives like-kind replacement property, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive like-kind replacement property.

(2) *Actual and constructive receipt.* Except as provided in paragraph (g) of this section (relating to safe harbors), for purposes of section 1031 and this section, the determination of whether (or the extent to which) the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made under the general rules concerning actual and constructive receipt and without regard to the taxpayer's method of accounting. The taxpayer is in actual receipt of money or property at the time the taxpayer actually receives the money or property or receives the economic benefit of the money or property. The taxpayer is in constructive receipt of money or property at the time the money or property is credited to the taxpayer's account, set apart for the taxpayer, or otherwise made available so that the taxpayer may draw upon it at any time or so that the taxpayer can draw upon it if notice of intention to draw is given. Although the taxpayer is not in constructive receipt of money or property if the taxpayer's control of its receipt is subject to substantial limitations or restrictions, the taxpayer is in constructive receipt of the money or property at the time the limitations or restrictions lapse, expire, or are waived. In addition, actual or constructive receipt of money or property by an agent of the taxpayer (determined without regard to paragraph (k) of this section) is actual or constructive receipt by the taxpayer.

(3) *Example.* This paragraph (f) may be illustrated by the following example.

Example. (i) B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to the agreement, on May 17, 1991, B transfers real property X to C. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. At any time after May 17, 1991, and before C has purchased the replacement property, B has the right, upon notice, to demand that C pay $100,000 in lieu of acquiring and transferring the replacement property. Pursuant to the agreement, B identifies replacement property, and C purchases the replacement property and transfers it to B.

(ii) Under the agreement, B has the unrestricted right to demand the payment of $100,000 as of May 17, 1991. B is therefore in constructive receipt of $100,000 on that date. Because B is in constructive receipt of money in the full amount of the consideration for the relinquished property before B actually receives the like-kind replacement property, the transaction constitutes a sale, and the transfer of real property X does not qualify for nonrecognition of gain or loss under section 1031. B is treated as if B received the $100,000 in consideration for the sale of real property X and then purchased the like-kind replacement property.

(iii) If B's right to demand payment of the $100,000 were subject to a substantial limitation or restriction (e.g., the agreement provided that B had no right to demand payment before November 14, 1991 (the end of the exchange period)), then, for purposes of this section, B would not be in actual or constructive receipt of the money unless (or until) the limitation or restriction lapsed, expired, or was waived.

(g) *Safe harbors*—(1) *In general.* Paragraphs (g)(2) through (g)(5) of this section set forth four safe harbors the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of section 1031 and this section. More than one safe harbor can be used in the same deferred exchange, but the terms and conditions of each must be separately satisfied. For purposes of the safe harbor rules, the term "taxpayer" does not include a person or entity utilized in a safe harbor (e.g., a qualified intermediary). See paragraph (g)(8), *Example 3(v)*, of this section.

(2) *Security or guarantee arrangements.* (i) In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property will be made without regard to the fact that the obligation of the taxpayer's transferee to transfer the replacement property to the taxpayer is or may be secured or guaranteed by one or more of the following—

(A) A mortgage, deed of trust, or other security interest in property (other than cash or a cash equivalent),

(B) A standby letter of credit which satisfies all of the requirements of § 15A.453–1 (b)(3)(iii) and which may not be drawn upon in the absence of a default of the transferee's obligation to transfer like-kind replacement property to the taxpayer, or

(C) A guarantee of a third party.

(ii) Paragraph (g)(2)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive money or other property pursuant to the security or guarantee arrangement.

(3) *Qualified escrow accounts and qualified trusts.* (i) In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property will be made without regard to the fact that the obligation of the taxpayer's transferee to transfer the replacement property to the taxpayer is or may be secured by cash or a cash equivalent if the cash or cash equivalent is held in a qualified escrow account or in a qualified trust.

(ii) A qualified escrow account is an escrow account wherein—

(A) The escrow holder is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section), and

(B) The escrow agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in the escrow account as provided in paragraph (g)(6) of this section.

(iii) A qualified trust is a trust wherein—

(A) The trustee is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section, except that for this purpose the relationship between the taxpayer and the trustee created by the qualified trust will not be considered a relationship under section 267(b)), and

(B) The trust agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held by the trustee as provided in paragraph (g)(6) of this section.

(iv) Paragraph (g)(3)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held in the qualified escrow account or qualified trust. Rights conferred upon the taxpayer under state law to terminate or dismiss the escrow holder of a qualified escrow account or the trustee of a qualified trust are disregarded for this purpose.

(v) A taxpayer may receive money or other property directly from a party to the exchange, but not from a qualified escrow account or a qualified trust, without affecting the application of paragraph (g)(3)(i) of this section.

(4) *Qualified intermediaries.* (i) In the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the qualified

intermediary is not considered the agent of the taxpayer for purposes of section 1031(a). In such a case, the taxpayer's transfer of relinquished property and subsequent receipt of like-kind replacement property is treated as an exchange, and the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives like-kind replacement property is made as if the qualified intermediary is not the agent of the taxpayer.

(ii) Paragraph (g)(4)(i) of this section applies only if the agreement between the taxpayer and the qualified intermediary expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary as provided in paragraph (g)(6) of this section.

(iii) A qualified intermediary is a person who—

(A) Is not the taxpayer or a disqualified person (as defined in paragraph (k) of this section), and

(B) Enters into a written agreement with the taxpayer (the "exchange agreement") and, as required by the exchange agreement, acquires the relinquished property from the taxpayer, transfers the relinquished property, acquires the replacement property, and transfers the replacement property to the taxpayer.

(iv) Regardless of whether an intermediary acquires and transfers property under general tax principals, solely for purposes of paragraph (g)(4)(iii)(B) of this section—

(A) An intermediary is treated as acquiring and transferring property if the intermediary acquires and transfers legal title to that property,

(b) An intermediary is treated as acquiring and transferring the relinquished property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with a person other than the taxpayer for the transfer of the relinquished property to that person and, pursuant to that agreement, the relinquished property is transferred to that person, and

(C) An intermediary is treated as acquiring and transferring replacement property if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement with the owner of the replacement property for the transfer of that property and, pursuant to that agreement, the replacement property is transferred to the taxpayer.

(v) Solely for purposes of paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, an intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the relevent transfer of property. For example, if a taxpayer enters into an agreement for the transfer of relinquished property and thereafter assigns its rights in that agreement to an intermediary and all parties to that agreement are notified in writing of the assignment on or before the date of the transfer of the relinquished property, the intermediary is treated as entering into that agreement. If the relinquished property is transferred pursuant to that agreement, the intermediary is treated as having acquired and transferred the relinquished property.

(vi) Paragraph (g)(4)(i) of this section ceases to apply at the time the taxpayer has an immediate ability or unrestricted right to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary. Rights conferred upon the taxpayer under state law to terminate or dismiss the qualified intermediary are disregarded for this purpose.

(vii) A taxpayer may receive money or other property directly from a party to the transaction other than the qualified intermediary without affecting the application of paragraph (g)(4)(i) of this section.

(5) *Interest and growth factors.* In the case of a deferred exchange, the determination of whether the taxpayer is in actual or constructive receipt of money or other property before the taxpayer actually receives the like-kind replacement property will be made without regard to the fact that the taxpayer is or may be entitled to receive any interest or growth factor with respect to the deferred exchange. The preceding sentence applies only if the agreement pursuant to which the taxpayer is or may be entitled to the interest or growth factor expressly limits the taxpayer's rights to receive the interest or growth factor as provided in paragragh (g)(6) of this section. For additional rules concerning interest or growth factors, see paragraph (h) of this section.

(6) *Additional restrictions on safe harbors under paragraphs (g)(3) through (g)(5).* (i) An agreement limits a taxpayer's rights as provided in this paragraph (g)(6) only if the agreement provides that the taxpayer has no rights, except as provided in paragraph (g)(6)(ii) and (g)(6)(iii) of this section, to receive, pledge, borrow, or otherwise obtain the benefits of money or other property before the end of the exchange period.

(ii) The agreement may provide that if the taxpayer has not identified replacement property by the end of the identification period, the taxpayer may have rights to receive, pledge, borrow, or othewise obtain the benefits of money or other property at any time after the end of the identification period.

(iii) The agreement may provide that if the taxpayer has identified replacement property, the taxpayer may have rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property upon or after—

(A) The receipt by the taxpayer of all of the replacement property to which the taxpayer is entitled under the exchange agreement, or

(B) The occurrence after the end of the identification period of a material and substantial contingency that—

(*1*) Relates to the deferred exchange,

(*2*) Is provided for in writing, and

(*3*) Is beyond the control of the taxpayer and of any disqualified person (as defined in paragraph (k) of this section), other than the person obligated to transfer the replacement property to the taxpayer.

(7) *Items disregarded in applying safe harbors under paragraphs (g)(3) through (g)(5).* In determining whether a safe harbor under paragraphs (g)(3) through (g)(5) of this section ceases to apply and whether the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property are expressly limited as provided in paragraph (g)(6) of this section, the taxpayer's receipt of or right to receive any of the following items will be disregarded—

(i) Items that a seller may receive as a consequence of the disposition of property and that are not included in the amount realized from the disposition of property (e.g., prorated rents), and

(ii) Transactional items that relate to the disposition of the relinquished property or to the acquisition of the replacement property and appear under local standards in the typical closing statements as the responsibility of a buyer or seller (e.g., commissions, prorated taxes, recording or transfer taxes, and title company fees).

(8) *Examples.* This paragraph (g) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B is to transfer real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. On or

before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received by B. The replacement property is identified as provided in paragraph (c) of this section (relating to identification of replacement property) and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) On May 17, 1991, B transfers real property X to C. On the same day, C pays $10,000 to B and deposits $90,000 in escrow as security for C's obligation to perform under the agreement. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow before November 14, 1991, except that:

(A) if B fails to identify replacement property on or before July 1, 1991, B may demand the funds in escrow at any time after July 1, 1991; and

(B) if B identifies and receives replacement property, then B may demand the balance of the remaining funds in escrow at any time after B has received the replacement property.

The funds in escrow may be used to purchase the replacement property. The escrow holder is not a disqualified person as defined in paragraph (k) of this section. Pursuant to the terms of the agreement, B identifies replacement property, and C purchases the replacement property using the funds in escrow and tranfers the replacement property to B.

(ii) C's obligation to transfer the replacement property to B was secured by cash held in a qualified escrow account because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow as provided in paragraph (g)(6) of this section. In addition, B did not have the immediate ability or unrestricted right to receive money or other property in escrow before B actually received the like-kind replacement property. Therefore, for purposes of section 1031 and this section, B is determined not to be in actual or constructive receipt of the $90,000 held in escrow before B received the like-kind replacement property. The transfer of real property X by B and B's acquisition of the replacement property qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

Example 2. (i) On May 17, 1991, B transfers real property X to C, and C deposits $100,000 in escrow as security for C's obligation to perform under the agreement. Also on May 17, B identifies real property J as replacement property. The escrow agreement provides that no funds may be paid out without prior written approval of both B and C. The escrow agreement also provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow before November 14, 1991, except that:

(A) B may demand the funds in escrow at any time after the later of July 1, 1991, and the occurrence of any of the following events—

(*1*) real property J is destroyed, seized, requisitioned, or condemned, or

(*2*) a determination is made that the regulatory approval necessary for the transfer of real property J cannot be obtained in time for real property J to be transferred to B before the end of the exchange period;

(B) B may demand the funds in escrow at any time after August 14, 1991, if real property J has not been rezoned from residential to commercial use by that date; and

(C) B may demand the funds in escrow at the time B receives real property J or any time thereafter.

Otherwise, B is entitled to all funds in escrow after November 13, 1991. The funds in escrow may be used to purchase the replacement property. The escrow holder is not a disqualified person as described in paragraph (k) of this section. Real property J is not rezoned from residential to commercial use on or before August 14, 1991.

(ii) C's obligation to transfer the replacement property to B was secured by cash held in a qualified escrow account because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in escrow as provided in paragraph (g)(6) of this section. From May 17, 1991, until August 15, 1991, B did not have the immediate ability or unrestricted right to receive money or other property before B actually received the like-kind replacement property. Therefore, for purposes of section 1031 and this section, B is determined not to be in actual or constructive receipt of the $100,000 in escrow from May 17, 1991, until August 15, 1991. However, on August 15, 1991, B had the unrestricted right, upon notice, to draw upon the $100,000 held in escrow. Thus, the safe harbor ceased to apply and B was in constructive receipt of the funds held in escrow. Because B constructively received the full amount of the consideration ($100,000) before B actually received the like-kind replacement property, the transaction is treated as a sale and not as a deferred exchange. The result does not change even if B chose not to demand the funds in escrow and continued to attempt to have real property J rezoned and to receive the property on or before November 13, 1991.

(iii) If real property J had been rezoned on or before August 14, 1991, and C had purchased real property J and transferred it to B on or before November 13, 1991, the transaction would have qualified for nonrecognition of gain or loss under section 1031(a).

Example 3. (i) On May 1, 1991, D offers to purchase real property X for $100,000. However, D is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. The exchange agreement between B and C provides that B is to execute and deliver a deed conveying real property X to C who, in turn, is to execute and deliver a deed conveying real property X to D. The exchange agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. On May 3, 1991, C enters into an agreement with D to transfer real property X to D for $100,000. On May 17, 1991, B executes and delivers to C a deed conveying real property X to C. On the same date, C executes and delivers to D a deed conveying real property X to D, and D deposits $100,000 in escrow. The escrow holder is not a disqualified person as defined in paragraph (k) of this section and the escrow agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section. However, the escrow agreement provides that the money in escrow may be used to purchase replacement property. On June 3, 1991, B identifies real property K as replacement property. On August 9, 1991, E executes and delivers to C a deed conveying real property K to C and $80,000 is released from the escrow and paid to E. On the same date, C executes and delivers to B a deed conveying real property K to B, and the escrow holder pays B $20,000, the balance of the $100,000 sale price of real property X remaining after the purchase of real property K for $80,000.

(ii) B and C entered into an exchange agreement that satisfied the requirements of paragraph (g)(4)(iii)(B) of this section. Regardless of whether C may have acquired and transferred real property X under general tax principles, C is treated as having acquired and transferred real property X because C acquired and transferred legal title to real property X. Similarly, C is treated as having acquired and transferred real property K because C acquired and transferred legal title to real property K. Thus, C was a qualified intermediary. This result is reached for purposes of this section regardless of whether C was B's agent under state law.

(iii) Because the escrow holder was not a disqualified person and the escrow agreement expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section, the escrow account was a qualified escrow account. For purposes of section 1031 and this section, therefore, B is determined not to be in actual or constructive receipt of the funds in escrow before B received real property K.

(iv) The exchange agreement between B and C expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the

benefits of any money held by C as provided in paragraph (g)(6) of this section. Because C was a qualified intermediary, for purposes of section 1031 and this section B is determined not to be in actual or constructive receipt of any funds held by C before B received real property K. In addition, B's transfer of real property X and acquisition of real property K qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

(v) If the escrow agreement had expressly limited C's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property in escrow as provided in paragraph (g)(6) of this section, but had not expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of that money or other property, the escrow account would not have been a qualified escrow account. Consequently, paragraph (g)(3)(i) of this section would not have been applicable in determining whether B was in actual or constructive receipt of that money or other property before B received real property K.

Example 4. (i) On May 1, 1991, B enters into an agreement to sell real property X to D for $100,000 on May 17, 1991. However, D is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. In the exchange agreement between B and C, B assigns to C all of B's rights in the agreement with D. The exchange agreement expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. On May 17, 1991, B notifies D in writing of the assignment. On the same date, B executes and delivers to D a deed conveying real property X to D. D pays $10,000 to B and $90,000 to C. On June 1, 1991, B identifies real property L as replacement property. On July 5, 1991, B enters into an agreement to purchase real property L from E for $90,000, assigns its rights in that agreement to C, and notifies E in writing of the assignment. On August 9, 1991, C pays $90,000 to E, and E executes and delivers to B a deed conveying real property L to B.

(ii) The exchange agreement entered into by B and C satisfied the requirements of paragraph (g)(4)(iii)(B) of this section. Because B's rights in its agreements with D and E were assigned to C, and D and E were notified in writing of the assignment on or before the transfer of real properties X and L, respectively, C is treated as entering into those agreements. Because C is treated as entering into an agreement with D for the transfer of real property X and, pursuant to that agreement, real property X was transferred to D, C is treated as acquiring and transferring real property X. Similarly, because C is treated as entering into an agreement with E for the transfer of real property K and, pursuant to that agreement, real property K was transferred to B, C is treated as acquiring and transferring real property K. This result is reached for purposes of this section regardless of whether C was B's agent under state law and regardless of whether C is considered, under general tax principles, to have acquired title or beneficial ownership of the properties. Thus, C was a qualified intermediary.

(iii) The exchange agreement between B and C expressly limited B's rights to receive, pledge, borrow, or otherwise obtain the benefits of the money held by C as provided in paragraph (g)(6) of this section. Thus, B did not have the immediate ability or unrestricted right to receive money or other property held by C before B received real property L. For purposes of section 1031 and this section, therefore, B is determined not to be in actual or constructive receipt of the $90,000 held by C before B received real property L. In addition, the transfer of real property X by B and B's acquisition of real property L qualify as an exchange under section 1031. See paragraph (j) of this section for determining the amount of gain or loss recognized.

Example 5. (i) On May 1, 1991, B enters into an agreement to sell real property X to D for $100,000. However, D is unwilling to participate in a like-kind exchange. B thus enters into an agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is not a disqualified person as described in paragraph (k) of this section. The agreement between B and C expressly limits B's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by C as provided in paragraph (g)(6) of this section. C neither enters into an agreement with D to transfer real property X to D nor is assigned B's rights in B's agreement to sell real property X to D. On May 17, 1991, B transfers real property X to D and instructs D to transfer the $100,000 to C. On June 1, 1991, B identifies real property M as replacement property. On August 9, 1991, C purchases real property L from E for $100,000, and E executes and delivers to C a deed conveying real property M to C. On the same date, C executes and delivers to B a deed conveying real property M to B.

(ii) Because B transferred real property X directly to D under B's agreement with D, C did not acquire real property X from B and transfer real property X to D. Moreover, because C did not acquire legal title to real property X, did not enter into an agreement with D to transfer real property X to D, and was not assigned B's rights in B's agreement to sell real property X to D, C is not treated as acquiring and transferring real property X. Thus, C was not a qualified intermediary and paragraph (g)(4)(i) of this section does not apply.

(iii) B did not exchange real property X for real property M. Rather, B sold real property X to D and purchased, through C, real property M. Therefore, the transfer of real property X does not qualify for nonrecognition of gain or loss under section 1031.

(h) *Interest and growth factors*—(1) *In general.* For purposes of this section, the taxpayer is treated as being entitled to receive interest or a growth factor with respect to a deferred exchange if the amount of money or property the taxpayer is entitled to receive depends upon the length of time elapsed between transfer of the relinquished property and receipt of the replacement property.

(2) *Treatment as interest.* If, as part of a deferred exchange, the taxpayer receives interest or a growth factor, the interest or growth factor will be treated as interest, regardless of whether it is paid to the taxpayer in cash or in property (including property of a like kind). The taxpayer must include the interest or growth factor in income according to the taxpayer's method of accounting.

(i) [Reserved]

(j) *Determination of gain or loss recognized and the basis of property received in a deferred exchange*—(1) *In general.* Except as otherwise provided, the amount of gain or loss recognized and the basis of property received in a deferred exchange is determined by applying the rules of section 1031 and the regulations thereunder. See §§ 1.1031(b)–1, 1.1031(c)–1, 1.1031(d)–1, 1.1031(d)–1T, 1.1031(d)–2, and 1.1031(j)–1.

(2) *Coordination with section 453.* [Reserved].

(3) *Examples.* This paragraph (j) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B, a calendar year taxpayer, and C agree to enter into a deferred exchange. Pursuant to their agreement, B is to transfer real property X to C on May 17, 1991. Real property X, which has been held by B for investment, is unencumbered and has a fair market value on May 17, 1991, of $100,000. B's adjusted basis in real property X is $40,000. On or before July 1, 1991 (the end of the identification period), B is to identify replacement property that is of a like kind to real property X. On or before November 13, 1991 (the end of the exchange period), C is required to purchase the property identified by B and to transfer that property to B. To the extent the fair market value of the replacement property transferred to B is greater or less than the fair market value of real property X, either B or C, as applicable, will make up the difference by paying cash to the other party after the date the replacement property is received. The replacement property is identified as provided in paragraph (c) of this section and is of a like kind to real property X (determined without regard to section 1031(a)(3) and this section). B intends to hold any replacement property received for investment.

Example 1. (i) On May 17, 1991, B transfers real property X to C and identifies real

property R as replacement property. On June 3, 1991, C transfers $10,000 to B. On September 4, 1991, C purchases real property R for $90,000 and transfers real property R to B.

(ii) The $10,000 received by B is "money or other property" for purposes of section 1031 and the regulations thereunder. Under section 1031(b), B recognizes gain in the amount of $10,000. Under section 1031(d), B's basis in real property R is $40,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money received ($10,000), and increased in the amount of gain recognized ($10,000) in the deferred exchange).

Example 2. (i) On May 17, 1991, B transfers real property X to C and identifies real property S as replacement property, and C transfers $10,000 to B. On September 4, 1991, C purchases real property S for $100,000 and transfers real property S to B. On the same day, B transfers $10,000 to C.

(ii) The $10,000 received by B is "money or other property" for purposes of section 1031 and the regulations thereunder. Under section 1031(b), B recognizes gain in the amount of $10,000. Under section 1031(d), B's basis in real property S is $50,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money received ($10,000), increased in the amount of gain recognized ($10,000), and increased in the amount of the additional consideration paid by B ($10,000) in the deferred exchange).

Example 3. (i) Under the exchange agreement, B has the right at all times to demand $100,000 in cash in lieu of replacement property. On May 17, 1991, B transfers real property X to C and identifies real property T as replacement property. On September 4, 1991, C purchases real property T for $100,000 and transfers real property T to B.

(ii) Because B has the right on May 17, 1991, to demand $100,000 in cash in lieu of replacement property, B is in constructive receipt of the $100,000 on that date. Thus, the transaction is a sale and not an exchange, and the $60,000 gain realized by B in the transaction (i.e., $100,000 amount realized less $40,000 adjusted basis) is recognized. Under section 1031(d), B's basis in real property T is $100,000.

Example 4. (i) Under the exchange agreement, B has the right at all times to demand up to $30,000 in cash and the balance in replacement propertry instead of receiving replacement property in the amount of $100,000. On May 17, 1991, B transfers real property X to C and identifies real property U as replacement property. On September 4, 1991, C purchases real property U for $100,000 and transfers real property U to B.

(ii) The transaction qualifies as a deferred exchange under section 1031 and this section. However, because B had the right on May 17, 1991, to demand up to $30,000 in cash, B is in constructive receipt of $30,000 on that date. Under section 1031(b), B recognizes gain in the amount of $30,000. Under section 1031(d), B's basis in real property U is $70,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money that B received ($30,000), increased in the amount of gain recognized ($30,000), and increased in the amount of additional consideration paid by B ($30,000) in the deferred exchange).

Example 5. (i) Assume real property X is encumbered by a mortgage of $30,000. On May 17, 1991, B transfers real property X to C and identifies real property V as replacement property, and C assumes the $30,000 mortgage on real property X. Real property V is encumbered by a $20,000 mortgage. On July 5, 1991, C purchases real property V for $90,000 by paying $70,000 and assuming the mortgage and transfers real property V to B with B assuming the mortgage.

(ii) The consideration received by B in the form of the liability assumed by C ($30,000) is offset by the consideration given by B in the form of the liability assumed by B ($20,000). The excess of the liability assumed by C over the liability assumed by B, $10,000, is treated as "money or other property." See § 1.1031(b)-1(c). Thus, B recognizes gain under section 1031(b) in the amount of $10,000. Under section 1031(d), B's basis in real property V is $40,000 (i.e., B's basis in real property X ($40,000), decreased in the amount of money that B is treated as receiving in the form of the liability assumed by C ($30,000), increased in the amount of money that B is treated as paying in the form of the liability assumed by B ($20,000), and increased in the amount of the gain recognized ($10,000) in the deferred exchange).

(k) *Definition of disqualified person.* (1) For purposes of this section, a disqualified person is a person described in paragraph (k)(2), (k)(3), or (k)(4) of this section.

(2) The person is the agent of the taxpayer at the time of the transaction. For this purpose, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction. Solely for purposes of this paragraph (k)(2), performance of the following services will not be taken into account—

(i) Services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under section 1031; and

(ii) Routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution, title insurance company, or escrow company.

(3) The person and the taxpayer bear a relationship described in either section 267(b) or section 707(b) (determined by substituting in each section "10 percent" for "50 percent" each place it appears).

(4) The person and a person described in paragraph (k)(2) of this section bear a relationship described in either section 267(b) or section 707(b) (determined by substituting in each section "10 percent" for "50 percent" each place it appears).

(5) This paragraph (k) may be illustrated by the following examples. Unless otherwise provided, the following facts are assumed: On May 1, 1991, B enters into an exchange agreement (as defined in paragraph (g)(4)(iii)(B) of this section) with C whereby B retains C to facilitate an exchange with respect to real property X. On May 17, 1991, pursuant to the agreement, B executes and delivers to C a deed conveying real property X to C. C has no relationship to B described in paragraphs (k)(2), (k)(3), or (k)(4) of this section.

Example 1. (i) C is B's accountant and has rendered accounting services to B within the 2-year period ending on May 17, 1991, other than with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under section 1031.

(ii) C is a disqualified person because C has acted as B's accountant within the 2-year period ending on May 17, 1991.

(iii) If C had not acted as B's accountant within the 2-year period ending on May 17, 1991, or if C had acted as B's accountant within that period only with respect to exchanges intended to qualify for nonrecognition of gain or loss under section 1031, C would not have been a disqualified person.

Example 2. (i) C, which is engaged in the trade or business of acting as an intermediary to facilitate deferred exchanges, is a wholly owned subsidiary of an escrow company that has performed routine escrow services for B in the past. C has previously been retained by B to act as an intermediary in prior section 1031 exchanges.

(ii) C is not a disqualified person notwithstanding the intermediary services previously provided by C to B (see paragraph (k)(2)(i) of this section) and notwithstanding the combination of C's relationship to the escrow company and the escrow services previously provided by the escrow company to B (see paragraph (k)(2)(ii) of this section).

Example 3. (i) C is a corporation that is only engaged in the trade or business of acting as an intermediary to facilitate deferred exchanges. Each of 10 law firms owns 10 percent of the outstanding stock of C. One of the 10 law firms that owns 10 percent of C is M. J is the managing partner of M and is the president of C. J, in his capacity as a partner in M, has also rendered legal advice to B within the 2-year period ending on May 17, 1991, on matters other than exchanges intended to qualify for nonrecognition of gain or loss under section 1031.

(ii) J and M are disqualified persons. C, however, is not a disqualified person because neither J nor M own, directly or indirectly, more than 10 percent of the stock of C. Similarly, J's participation in the management of C does not make C a disqualified person.

(l) [Reserved]

(m) *Definition of fair market value.* For purposes of this section, the fair market value of property means the fair market value of the property without

regard to any liabilities secured by the property.

(n) *No inference with respect to actual or constructive receipt rules outside of section 1031.* The rules provided in this section relating to actual or constructive receipt are intended to be rules for determining whether there is actual or constructive receipt in the case of a deferred exchange. No inference is intended regarding the application of these rules for purposes of determining whether actual or constructive receipt exists for any other purpose.

(o) *Effective date.* This section applies to transfers of property made by a taxpayer on or after June 10, 1991. However, a transfer of property made by a taxpayer on or after May 16, 1990, but before June 10, 1991, will be treated as complying with section 1031 (a)(3) and this section if the deferred exchange satisfies either the provision of this section or the provisions of the notice of proposed rulemaking published in the **Federal Register** on May 16, 1990 (55 FR 20278).

Dated: April 12, 1991.

Approved:

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-10170 Filed 4-25-91; 3:49 pm]

BILLING CODE 4830-01-M

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26 CFR Part 301

[T.D. 8347]

RIN 1545-ANO7

Administrative Appeal of the Erroneous Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. The right to an administrative appeal of the erroneous filing of a notice of federal tax lien was established by the Technical and Miscellaneous Revenue Act of 1988. The regulations set forth the situations in which persons may appeal the erroneous filing of a notice of federal tax lien, the office to which appeals may be made, and the information and documents that must be submitted with an appeal.

EFFECTIVE DATE: The regulations providing the right to an administrative appeal of the erroneous filing of a notice of federal tax lien are effective July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6326 of the Internal Revenue Code. The regulations reflect the amendment of section 6326 by section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

The Internal Revenue Service published a temporary regulation and a notice of proposed rulemaking by cross-reference to the temporary regulation in the **Federal Register** on May 8, 1989 [54 FR 19568, 19578]. The Internal Revenue Service gave the Small Business Administration the opportunity to comment prior to publication of the regulation.

Numerous parties submitted written comments concerning the regulation. Each of the issues raised in the public comments either had been considered prior to the publication of the temporary regulation, or falls outside the scope of the regulation. Several of the comments received by the Internal Revenue Service are discussed below. No changes have been made in the final regulation.

Section 6238 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) redesignated section 6326 of the Internal Revenue Code as section 6327 and added a new section 6326. Section 6326(a) provides that the Secretary shall prescribe regulations that provide for the administrative appeal of the erroneous filing of a notice of federal tax lien. Section 6326(b) provides that if the Secretary determines that the Internal Revenue Service has erroneously filed a notice of federal tax lien, the Secretary must expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of the lien. This certificate must include a statement that the filing was erroneous.

The regulations provide that a person may file an administrative appeal of the erroneous filing of a notice of federal tax lien in any of the following situations: (1) The tax liability that gave rise to the lien was satisfied in full prior to the filing of notice; (2) the underlying liability was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code; (3) the underlying liability was assessed in violation of title 11, *i.e.*, the Bankruptcy Code; or (4) the statute of limitations for collection expired prior to the filing of notice.

The legislative history of section 6326 indicates that the administrative appeal is intended to be used only for the purpose of correcting publicly the erroneous filing of a notice of federal tax lien, not to challenge the underlying deficiency that led to the filing of a lien. In addition to the three situations specifically enumerated in the legislative history, to which section 6326 is meant to apply, the Internal Revenue Service considers it in keeping with the spirit of the Taxpayer Bill of Rights also to allow an appeal when the statute of limitations on collection expired prior to the filing of notice of federal tax lien. This additional situation also involves an erroneous filing of a notice of federal tax lien.

Some situations that commenters suggested should be covered by section 6326 already are covered under other sections of the Internal Revenue Code. For example, several parties who submitted comments suggested that the filing of a federal tax lien against a person with the same or a similar name as the liable taxpayer is erroneous and should be covered by section 6326 and these regulations. As discussed in the preamble to the temporary regulations, however, this situation is covered by section 6325(e) of the Internal Revenue Code, which gives the Secretary the authority to issue a certificate of nonattachment of lien if, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 of the Code refers to such person. Section 6325(e) is available to a nonliable spouse who has been named on a notice of federal tax lien filed against a liable spouse as well as to same or similar name situations.

Several of the comments received by the Internal Revenue Service involved substantive challenges to the lien, which Congress did not intend to include under section 6326. For example, two parties suggested that the final regulations should provide the right to appeal the filing of nominee liens. However, whether or not a nominee lien is properly filed depends upon who actually owns the property in question, the liable taxpayer or the nominee. This is a substantive issue. Another party

suggested that the regulation should allow appeals by taxpayers who are in the process of questioning their liability for a 100 percent penalty under section 6672 of the Internal Revenue Code. This too is a substantive issue.

The regulations provide that appeals under section 6326 shall be made to the district director, attention Chief, Special Procedures Function, of the district in which the lien was filed.

Several parties questioned the decision to give the Special Procedures function jurisdiction over administrative appeals of erroneous filings of Federal tax liens. One party suggested that jurisdiction should lie with the Office of Appeals. Another party suggested that jurisdiction should lie either with the Office of Appeals or with Chief Counsel. During the formulation of the temporary regulations it was determined that Special Procedures should be given jurisdiction because Special Procedures: (1) Is intimately familiar with the issues that are appealable under section 6326; (2) is in close proximity to the information on which decisions will be based under section 6326; and (3) is currently handling very similar appeals under § 401.6325–1 of the Code of Federal Regulations.

Other parties further suggested that the regulation should provide for a hearing and a written decision. During the formulation of the temporary regulations, it was determined that the appealable issues under this statute are straightforward and relatively simple, thus obviating the need for a hearing. A provision requiring a formal hearing and a formal written opinion would needlessly delay the appeal process.

The regulations provide that a request for appeal under section 6326 is to be submitted in writing, and is to include the identity of the appealing party, a copy of the notice of lien affecting the property, if available, and the ground upon which the release of lien is sought. If the ground for release is that the liability was paid prior to the filing, the written request must include proof of full payment. If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous. If the ground for appeal is that the tax liability that gave rise to the lien was assessed in violation of title 11, the appealing party must identify the court and the district in which the bankruptcy petition was filed and provide the docket number and the date of filing of the bankruptcy petition.

Finally, the regulations provide that the appeal provided by section 6326 and these regulations shall be a person's exclusive administrative remedy for the erroneous filing of a notice of Federal tax lien.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. Chapter (5) and the Regulatory Flexibility Act (5 U.S.C. chapter (6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Kevin B. Connelly of the General Litigation Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6326–1 is issued under 26 U.S.C. 6326.

§ 301.6326–1T [Amended]

Para. 2. Section 301.6326–1T is redesignated as § 301.6326–1, and the word "(temporary)" is removed from the section heading.

Approved: April 15, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–10177 Filed 4–30–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public meetings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold two public meetings to answer questions about the Agency's new explosive standards which become effective on May 20, 1991.

DATES: The public meetings will be held on May 14, 1991 in Reno, Nevada and May 16, 1991 in Birmingham, Alabama. Each meeting will begin at 9 a.m.

ADDRESSES: The public meetings will be held at the following locations:

1. May 14, 1991—Flamingo Hilton, Reno, 3rd Floor Convention Center, 255 N. Seirra Street, Reno, NE. 89503.
2. May 16, 1991—Birmingham Civic Center, North Meeting Room—DJ, 1 Civic Center Plaza, Birmingham, AL 35203.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Division of Safety, Metal and Nonmetal Mine Safety and Health, (MSHA), phone (703) 235–8647.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule in the **Federal Register** (56 FR 2070) revising its safety standards for explosives at metal and nonmetal mines. With the exception of the following provisions: The definition of the term "blast site" in § 56.6000 and § 57.6000; paragraph (b) of §56.6306 and § 57.6306, loading and blasting; the first sentence of paragraph (b) of § 56.6130 and § 57.6130, explosive material storage facilities; paragraph (a)(1) of § 56.6131 and § 57.6131, location of explosive material storage facilities and Appendix I to Subpart E—MSHA Tables of Distances; and paragraph (a) of § 56.6501 and § 57.6501, nonelectric initiating systems, these standards will take effect on May 20, 1991. The final rule changed several provisions in the existing standards to accommodate advances in mining technology. In addition, alternative methods of compliance were provided for many standards. In response to requests from the mining community, MSHA has scheduled two public meetings to provide individuals with an opportunity to informally discuss the revised

standards with representatives of the agency. Each meeting is scheduled to begin at 9 a.m., local time.

Dated: April 26, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-10278 Filed 4-30-91; 8:45 am]

BILLING CODE 4510-43-M

POSTAL SERVICE

39 CFR Part 20

Pickup Services for Express Mail International Service and International Parcel Post

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service announces implementation of on-call pickup service for Express Mail International Service and scheduled pickup service for international parcel post. The fee for each of these services is $4.50 per pickup.

EFFECTIVE DATE: 12:01 a.m., May 5, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 268-2650.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is implementing on-call pickup service for Express Mail International Service (EMS) and scheduled pickup service for international parcel post.

As required by the Postal Reorganization Act, the pickup fees established by this notice are fair and reasonable, are not unduly or unreasonably discriminatory or preferential, apportion the costs of the service to mailers on a fair and equitable basis, and do not apportion the costs of pickup service so as to impair the overall value of the service to the users.

I. Express Mail International On-Call Pickup Service—Fee $4.50.

Current postal regulations provide for scheduled pickup service for Express Mail International Service (EMS), and scheduled or on-call pickup service for domestic Express Mail Service. This notice adds the on-call pickup service option to EMS. On-call pickup service for EMS may be requested during the normal business hours of the serving postal facility. The pickup will be made within 2 hours before the end of any business day or may be deferred until the next day if sufficient time is not available.

The service will be available only at post offices with city delivery (see Publication 65, National Five-Digit ZIP Code and Post Office Directory) and at other post offices, at the discretion of the local postmaster, where adequate resources are available. The charge for on-call pickup of EMS will be $4.50. If domestic Express Mail Service, international parcel post, domestic Priority Mail, or domestic parcel post is being picked up in the same pickup stop, only one pickup charge applies. The fee does not apply if the pickup is made during a regular mail delivery or collection (e.g. rural mail box, city mail box, etc.). Furthermore, the pickup fee is waived if the pickup is canceled by the customer prior to the dispatch of the pickup employee.

When calling for a pickup, the mailer must advise the serving postal facility of the volume of mail to be picked up. The Postal Service reserves the right to defer pickup or to make multiple pickups at no additional charge to the mailer when the volume to be picked up exceeds available vehicle capacity or when otherwise necessary. In addition, the Postal Service may refuse to provide on-call pickup service if bad weather or road conditions exist, if facility (mailer or postal premises) emergencies occur, if unforseen personnel or vehicle shortages exist, or when other exceptional situations occur.

II. International Parcel Post Scheduled Pickup Service—Fee $4.50.

Current postal regulations provide for scheduled pickup service for domestic Priority Mail and parcel post. This notice establishes scheduled pickup service for international parcel post.

Scheduled pickup service for international parcel post is to be performed in accordance with a service agreement between the Postal Service and the mailer. The service agreement must specify the time, place, day or date, frequency of pickup service, and approximate volume per pickup. (Form 5631, Express Mail Service Agreement, may be adapted for this use.) There will be a charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. If domestic Express Mail Service, Express Mail International Service, domestic Priority Mail, or domestic parcel post is being picked up in the same pickup stop, only one pickup charge applies. The fee does not apply if pickup is made during a regular mail delivery or collection run (e.g. rural mail box, city mail box, etc.). No on-call pickup service is provided for international parcel post.

Scheduled international parcel post pickup will be available at post offices with city delivery (see Publication 65) and at other post offices where mutually satisfactory service agreements can be reached with the mailer. The mailer must notify the serving post office at least 24 hours in advance of the scheduled pickup if the pickup is not needed (canceled) or if the volume of mail to be picked up exceeds the amount specified in the service agreement by more than 20%. Failure to do so will result in the mailer being charged the pickup fee for each additional trip required.

The Postal Service reserves the right to defer pickup, to make multiple pickups and to establish plant-load service, at no additional charge to the mailer, when necessary even if not specified in the service agreement.

Accordingly, the Postal Service adopts the following amendments to sections 212 and 272 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Postal Service, Foreign relations, Incorporation by reference.

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. In the International Mail Manual, revise 212.24 and 272.3 to read as follows:

212.24 Pickup service.

On-call and scheduled pickup service is available for an added charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, domestic Priority Mail, International parcel post, and/or domestic parcel post is also picked up at the same time. No pickup fee will be charged when international Express Mail is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM 224.3.

* * * * *

272.3 Pickup service.

Scheduled pickup service is available for an added charge of $4.50 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, international Express Mail, domestic Priority Mail, and/or domestic parcel post is also picked up at the same

time. No pickup fee will be charged when international parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM 722.5.

A transmittal letter making the changes in the pages in the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-10169 Filed 4-30-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3711/R1108; FRL-3880-8]

Pesticide Tolerances For Inorganic Bromide Resulting From Fumigation With Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the tolerances for residues of inorganic bromide in or on ginger roots to allow preplant soil fumigation with methyl bromide. The amendments to the tolerances for inorganic bromide were requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective May 1, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3711/R1108], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 16, 1991 (56 FR 1591), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3711 to EPA on behalf of the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose an amendment to 40 CFR 180.123 by revising the existing tolerance for residues of inorganic bromide in or on ginger roots resulting from postharvest fumigation with methyl bromide to allow preplant soil fumigation. The existing tolerance for residues of inorganic bromide on ginger roots at 100 parts per million resulting from postharvest commodity fumigation with methyl bromide would remain in effect. No increase in the existing tolerance for residues of inorganic bromide on ginger roots was proposed to cover residues resulting from both preplant soil fumigation and postharvest commodity fumigation.

The petitioner proposed that this use of methyl bromide be limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

To make the regulations consistent, EPA also proposed to add a tolerance with regional registration under 40 CFR 180.199 for residues of inorganic bromide in or on ginger roots at 100 ppm resulting from soil fumigation with methyl bromide and chloropicrin. Tolerances under 40 CFR 180.199 are established for residues of inorganic bromide resulting from soil fumigation with combinations of chloropicrin, methyl bromide, or propargyl bromide. Chloropicrin is used in combination with methyl bromide as a warning agent. No tolerance is needed for chloropicrin, since the Agency has concluded that no residues of chloropicrin will remain in or on ginger roots as a result of preplant soil fumigation with formulations containing chloropicrin at 2 percent or less.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.123, by designating the current text as paragraph (a) and revising its introductory text and adding new paragraph (b), to read as follows:

§ 180.123 Inorganic bromides resulting from fumigation with methyl bromide; tolerances for residues.

(a) Tolerances are established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities which have been fumigated with the antimicrobial agent and insecticide methyl bromide after harvest (with the exception of strawberries):

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the

following raw agricultural commodity grown in soil fumigated with methyl bromide.

Commodity	Parts per million
Ginger, roots (Pre- and Post-H)	100

3. In § 180.199, by adding new paragraph (c), to read as follows:

§ 180.199 Inorganic bromides resulting from soil treatment with combinations of chloropicrin and methyl bromide, or propargyl bromide; tolerances for residues.

* * * * *

(c) A tolerance with regional registration, as defined in § 180.1(n), is established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodity grown in soil fumigated with combinations of methyl bromide and chloropicrin. No tolerance is established for chloropicrin since it has been established that no residue of this substance remains in the raw agricultural commodity when formulations containing chloropicrin at 2 percent or less are used.

Commodity	Parts per million
Ginger, roots (Pre- and Post-H)	100

[FR Doc. 91-9968 Filed 4-30-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR PART 261

[FRL-3951-1]

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency is today announcing an administrative stay of a portion of the hazardous waste listing K069 so that the listing does not apply to slurries generated from air pollution control devices that are intended to capture acid gases and are not dedicated chiefly to control of particulate air emissions.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: The RCRA regulatory docket for this administrative stay is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-91-K69S-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4787.

SUPPLEMENTARY INFORMATION: In the initial hazardous waste regulations implementing section 3001 of RCRA, the Agency listed as hazardous "emission control dust/sludge from secondary lead smelting" (EPA Hazardous Waste No. K069). This listing was intended to apply to the lead-rich particulate captured by secondary lead smelting air pollution control devices utilized for control of particulate matter. See Background Document for Listing of Hazardous Wastes, November 14, 1980, pp. 835-37; 840-42. The literal language of the listing regulation, however, encompasses not only this lead-rich residue, but sludges captured by other types of air emission control equipment, which sludges are unlike the waste EPA intended to list in terms of physical form, volume generated, and toxicity.

One secondary lead smelter, Exide/General Battery Corporation, located in Reading, Pennsylvania, operates air pollution control devices that capture particulate matter and a second control device utilized for acid gas control. This acid gas scrubber generates a slurry containing some lead and other toxic metals, although at levels that do not exhibit any characteristic of hazardous waste as measured by the Toxicity Characteristic Leaching Procedure (TCLP), and previously measured by Extraction Procedure (EP); see docket to today's rule for historical and recent analytical data. To the Agency's knowledge, Exide is the only secondary lead smelter that generates this type of slurry.

However, the language of the K069 listing regulation captures the slurry since it is a type of "sludge", i.e. a residue of a pollution control process (see § 260.10)). The slurry is not the waste the Agency meant to list. It is not generated by an air emission control device used chiefly to control lead emissions and other particulate, it is not amenable to recovery in the secondary lead process, it is not a dust, it is generated in lower volumes then the typical K069 waste, and it contains significantly lower concentrations of lead and other toxic metals than the typical K069 waste. Exide provided data showing that the levels of lead (910 ppm) and cadmium (12.7 ppm) in its sludge are far below the level given in the Agency's Background Document for listing K069 (53,000 to 120,000 ppm lead, and 340 to 900 ppm cadmium).

Leachable concentrations of lead and other toxic metals in the slurry are also significantly less than in the usual K069 waste. Exide provided extensive analytical data collected from 1989 to 1991 clearly demonstrating that leachable levels of toxic metals are low. Specifically, approximately 100 EP measurements of leachable metals taken in 1989 show that cadmium, lead, and chromium are usually far below the toxicity characteristic levels; the mean EP value (at the 95th percentile upper confidence limits) for these metals are less than one tenth (i.e., 10-fold less than) the characteristic levels. The levels of leachment metals for typical K069 wastes given in the Background Document exceeded the characteristic levels by factors of 5 to 230 for cadmium, 50 to 480 for lead, and 1 to 240 for chromium. Exide also provided more recent TCLP measurements of its waste obtained in 1990 and 1991 that show even longer levels of leachable cadmium and lead. Of nineteen TCLP samples, all were less than one tenth of the characteristic levels. See the docket to today's rule for further details of this analysis.

EPA intends in the near future to propose to amend the language of the K069 listing to clarify the scope of the listing to excluded sludges generated by air pollution devices that are not a plant's chief means of controlling lead emissions. In the interim, however, the Agency has determined to grant a limited administrative stay of the K069 listing pursuant to 5 U.S.C. 705,[1] in order that the listing not apply to the slurry waste generated by the Exide acid gas scrubber or to any other similar waste (if such a waste should exist). The Agency is taking this action not only because it appears that the listing was not intended to apply to this waste and that the waste does not exhibit any characteristic of hazardous waste and

[1] Exide has raised this issue in its petition for review challenging and land disposal restrictions regulations promulgated on June 1, 1990 (55 FR 22520).

would not be listed if the Agency were approaching the issue *de novo*, but also because Exide is presently incurring significant treatment and disposal costs for this slurry (particularly as a result of recently-promulgated treatment standards issued as part of the Land Disposal Restriction Third regulation, at (55 FR 22568) (June 1, 1990)) which potentially jeopardize the company's continued ability to operate. Given that the listing appears to also apply inappropriately to the waste, and other lead-bearing materials, and that Exide's recovery process specifically aids in meeting the Land Disposal Restriction treatment standards for lead acid batteries, EPA finds that justice requires issuance of a limited administrative stay. See 5 U.S.C. 705. For the same reasons, EPA finds that grant of a stay is necessary to prevent irreparable harm to Exide, will not impede EPA's administration of the subtitle C program (which will continue to apply to all K069 wastes that EPA intended to list), and is in the public interest.

Accordingly, the Agency is issuing this administrative stay of the K069 listing so that it does not apply to the slurry generated by acid gas air pollution control devices at Exide/General Battery Reading, Pennsylvania facility. The listing continues to apply to Exide's (and all other secondary lead smelters') dusts generated by particulate matter air pollution control devices. The administrative stay will remain in effect until 30 days after completing of rulemaking dealing with the scope of the K069 listing. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling and Reporting and Recordkeeping Requirements.

Dated: April 18, 1991.

F. Henry Habicht II,

Deputy Administrator.

For the reasons set at in the preamble, title 40, chapter I, part 261 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.32 is amended by revising the K069 listing to read as follows:

§ 261.32 Hazardous wastes from specific sources

* * * * *

Industry and EPA hazardous waste no.	Hazardous waste	Hazard code
* * * * *		
Secondary lead: K069	Emission control dust/sludge from secondary lead smelting. (NOTE: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the **Federal Register**.	(T)
* * * * *		

[FR Doc. 91-9902 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6855

[NM-940-4214-10; NMNM 055653]

Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 566.30 acres of public land withdrawn for research programs in connection with Federal programs. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange as directed by Public Law 100-559.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

By virtue of the authority vested in the Secretary of the Interior by Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and as directed by Public Law 100-559, it is ordered as follows:

1. Public Land Order No. 2051, which withdrew public land and reserved it under the jurisdiction of the Secretary of the Interior for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research programs in connection with Federal programs, is hereby revoked insofar as it affects the following described land:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
sec. 22, lots 5 and 6;
sec. 23, lots 1 and 2, and 5 to 16, inclusive.

The area contains 566.30 acres in Dona Ana County.

2. The land described above is hereby opened to the land exchange as authorized and directed by Section 502 of Public Law 100-559.

Dated: April 26, 1991.

Dave O'Neal

Assistant Secretary of the Interior.

[FR Doc. 91-10339 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-FB-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580, 581 and 583

[Docket No. 91-1]

Bonding of Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice of extension of time.

SUMMARY: The Federal Maritime Commission is extending until May 24, 1991, the time by which non-vessel-operating common carriers ("NVOCCs") may file new tariffs to become effective on one day's notice. The granting of this authority does not constitute an exemption from the penalty provisions of the Shipping Act of 1984 for those NVOCCs that may be operating without a tariff on file as required by section 8 of the 1984 Act.

EFFECTIVE DATE: April 24, 1991.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Deputy Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: On January 15, 1991, the Commission published in the **Federal Register**, 56 FR

1493, an Interim Rule and Request for Comments in Docket No. 91–1, *Bonding of Non-Vessel-Operating Common Carriers,* to implement the Non-Vessel-Operating Common Carrier Amendments of 1990 ("1990 Amendments"), section 710 of Public Law No. 101–595. Due to the limited time between publication of the Interim Rule and the effective date of the 1990 Amendments on February 14, 1991, the Interim Rule provided authority for new tariffs filed by NVOCCs on or before February 14, 1991, to become effective on one day's notice. By Order dated February 13, 1991, the Commission deferred the effective date of the Interim Rule until April 15, 1991. That Order also extended until April 15, 1991, the authority for new NVOCC tariffs to be filed on one day's notice.

In a special permission application requesting extension of the one day's notice authority, the Commission has been advised by Effective Tariff Management ("ETM") that articles in the trade press and statements by freight forwarding industry leaders have led a significant number of foreign NVOCCs to believe that the bonding requirement would be further stayed beyond the April 15, 1991, effective date. ETM contends that this confusion has resulted in the failure of many companies to properly file a bond. ETM also alleges that due to a fear that a new tariff would be rejected if a bond was not on file, many NVOCCs have held off filing their new tariffs.

In view of the foregoing, the Commission has determined to extend the period during which NVOCCs may file new tariffs on one day's notice until May 24, 1991. This action does not constitute a waiver by the Commission of the prohibition against operating as a common carrier without having an effective tariff on file or of the penalty provisions of section 13 of the Shipping Act of 1984 and the Commission's implementing regulations.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–10180 Filed 4–30–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–127; RM–7203]

Radio Broadcasting Services; Erath, Louisiana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Solo Music Company, permittee of Station KXKW(FM) (formerly KRAR(FM)), substitutes Channel 299C3 for Channel 299A at Erath, Louisiana, and modifies its authorization to specify operation on the higher powered channel. See 55 FR 10790, March 23, 1990. Channel 299C3 can be allotted to Erath, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.3 miles) northwest to avoid a short-spacing to Station KCIL(FM), Channel 298C1, Houma, Louisiana. The coordinates for the allotment of Channel 299C3 at Erath are North Latitude 29–59–30 and West Longitude 92–05–47. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–127, adopted April 15, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 299A and adding Channel 299C3 at Erath.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–10229 Filed 4–30–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Dalea Foliosa (Leafy Prairie-Clover) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Dalea foliosa* (leafy prairie-clover), a rare plant presently known from only two sites in Alabama, nine sites in Tennessee, and three sites in Illinois, to be an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. It is endangered throughout its range by habitat alteration; residential, commercial, or industrial development; livestock grazing; and conversion of its limited habitat to pasture. This action extends Federal protection under the Act to leafy prairie-clover.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Dalea foliosa (Gray) Barneby (leafy prairie-clover) is a perennial member of the pea family (Fabaceae) that has only been collected from Illinois, Tennessee, and Alabama. The erect 0.5-meter- (1.5-foot-) tall stems arise from a hardened root crown. The plant's pinnately compound alternate leaves are 3.5 to 4.5 centimeters (1.4 to 1.8 inches) long and are composed of 20 to 30 leaflets. The small purple flowers are borne in dense spikes at the end of the stems (Smith and Wofford 1980). Flowering begins in late July and continues through August. Seeds ripen by early October, and the above-ground portion of the plant dies soon afterward. The dead stems remain erect and disperse ripened seeds from late fall to early spring (Baskin and Baskin 1973).

Leafy prairie-clover was described by Gray in 1868 as *Petalostemum foliosum* (Gray 1868). Barneby (1977) included the species of the genus *Petalostemon*

(alternative spelling) within his concept of the genus *Dalea*, and his treatment of the group is followed by the Service.

Leafy prairie-clover is typically found growing in close association with the cedar glades of central Tennessee and northern Alabama. However, it seems to prefer the deeper soil of the prairielike areas along the boundaries of and within the rocky cedar glades (Smith and Wofford 1980). In Illinois, the species is now found only along the Des Plaines River, growing in prairie remnants that occur on thin-soil areas overlying dolomite (Kurz and Bowles 1981). A description of the species' status within each State where it occurs is provided below.

Alabama. There are four known locations for leafy prairie-clover in Alabama. Two of these were discovered in the late 1960s (Baskin and Caudle 1967). At the time of their discovery, one population (Franklin County) was small and contained only a few plants. The other population (Morgan County) was relatively larger and contained several hundred individuals. Smith and Wofford (1980) reported that no plants were found at the Franklin County site during the 1980 field season. They further reported that while the Morgan County population only supported about 50 individuals, it appeared to be a healthy reproducing population. In 1989 a third population was discovered in Lawrence County. This population is small and is located within the right-of-way of a Tennessee Valley Authority (TVA) power transmission line (Leo Collins, TVA, personal communication, 1990). The fourth Alabama population was discovered in 1984 in Jefferson County. This site was searched twice by botanists, once in 1989 and again in 1990, and it apparently no longer supports the species. At the present time there are believed to be two extant and two extirpated populations in the State (Scott Gunn, Alabama Natural Heritage Program, personal communication, 1990).

Illinois. Leafy prairie-clover was originally known from six counties in the northeastern portion of the State (Kurz and Bowles 1981). Only three populations are now known in the State. All are in Will County and are in prairie remnants along the Des Plaines River. Historically, the species was also found in Boone, Ogle, Kane, La Salle, and Kankakee Counties. The Illinois Department of Conservation recently attempted to reestablish the species at one of the historic Kankakee County sites. In the spring of 1988, 105 individuals were planted in suitable habitat at this historic location. The spring and summer of 1988 were very dry in northern Illinois, and only six individuals survived to the fall of 1988 (John Schwegman, Illinois Department of Conservation, personal communication, 1989). It is not known whether a viable, reproducing population will become reestablished at this site.

Two of the known Illinois sites are protected and/or managed by the Will County Forest Preserve District. A third site, recently rediscovered by the Illinois State Natural History Survey Division, is adjacent to the right-of-way for a proposed new highway. All of a fourth Will County location was recently bulldozed, and all of the *Dalea foliosa* at the site were destroyed. The Will County Forest Preserve District will attempt to acquire this area and reintroduce leafy prairie-clover to the site, provided suitable habitat still exists (De Mauro *in litt.*).

Tennessee. The following information on leafy prairie-clover in Tennessee was primarily derived from Smith and Wofford (1980) and Dr. Paul Somers (Tennessee Department of Conservation, personal communication, 1989, and Somers *in litt.*).

The Service believes that there are currently only nine viable leafy prairie-clover populations in Tennessee. Most of these populations are small and contain fewer than 50 individual plants. Historically, the plant was known from seven Rutherford County sites. One of these sites was destroyed by industrial construction, and the species has not been observed on three other Rutherford County sites in the recent past. In Rutherford County the only currently known viable population is in a State park and consists of 25 to 30 individuals. Two additional Rutherford County sites support two individuals each; the Service does not consider these to represent viable populations.

There are two records of the species in Wilson County located on lands managed by the Tennessee Department of Conservation. One of these was discovered in 1979 and supported about 30 individuals in 1990. The other was discovered in 1990 and contained about 20 individuals. In June 1990, Marshall County was found to support two leafy prairie-clover populations; one of these contained 21 plants, while the other contained 15 plants (Baskin and Wofford *in litt.*). In late May 1990, a healthy population of leafy prairie-clover was discovered in Bedford County by Mr. J. Raveill of the Tennessee Department of Conservation. This population contained about 250 plants in June 1990. The glades supporting this population are privately owned and exhibit little evidence of disturbance (Baskin and Wofford *in litt.*).

Davidson County once supported four populations. One of the sites was bulldozed for development and is or soon will be lost to the species. Another site is slated for development and is expected to be lost, and two very small populations, discovered in 1985, have not been observed since their discovery. None of the Davidson County populations are considered by the Service to be viable.

Williamson County supports one population of the species; most of this site was acquired through donation by The Nature Conservancy and is protected. However, a small portion remains in private ownership and could be lost.

Maury County once supported three populations of leafy prairie-clover. In June 1990 it was determined that one population was extirpated, and a second only supported about 50 plants. The third population is the largest and healthiest in Tennessee and is owned by TVA. This site is within the floodpool of the proposed Columbia Dam project, and half of the 630 plants found there will be flooded if the project is constructed as originally proposed. (See the "Summary of Factors Affecting the Species" section of this rule for further discussion of this project).

The Tennessee Department of Conservation conducted a survey of several hundred cedar glades and cedar glade remnants in the central basin of Tennessee during the 1987 through 1990 field seasons. Despite this thorough search of much of the available habitat for leafy prairie-clover, only two new populations of the species were found.

Federal government actions on this species began with Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Dalea foliosa (Petalostemum foliosum)* was included in the Smithsonian report and in the July 1,

1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangerd species pursuant to section 4 of the Act; *Dalea foliosa* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Dalea foliosa* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened is appropriate. This species was changed to a category 2 species for the revised plant notices of review published in 1983 (48 FR 53640) and in 1985 (50 FR 39526).

Category 2 species are those for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. This was the case with *Dalea foliosa*. The Service believed that additional searches of potential habitat in central Tennessee were needed before a decision could be made as to whether to prepare a proposed rule to add the species to the list. The Service funded a survey in 1979 to determine the status of *Dalea foliosa* in Alabama and Tennessee; a final report on this survey was accepted by the Service in 1980. A report summarizing the status of the species in Illinois was completed by Kurz and Bowles in 1981. During the 1987, 1988, 1989, and 1990 field seasons, personnel with the Tennessee Department of Conservation conducted an extensive inventory of cedar glades in central Tennessee. Several hundred sites were visited during this inventory, and only two additional populations of *Dalea foliosa* were discovered. Based on the additional information, *Dalea foliosa* was changed to a category 1 species in the plant notice of review published February 21, 1990 (55 FR 6184).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dalea foliosa* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1989, the Service found that the petitioned listing of *Dalea foliosa* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The March 27, 1990, proposal to list leafy prairie-clover as endangered (55 FR 11230) constituted the final 12-month finding for this species.

Summary of Comments and Recommendations

In the March 27, 1990, proposed rule; the October 1, 1990, notice of public hearing and extension of the comment period (55 FR 39988); the October 16, 1990, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: Daily Herald, Columbia, Tennessee; Nashville Banner, Nashville, Tennessee; Lebanon Democrat, Lebanon, Tennessee; Daily News Journal, Murfreesboro, Tennessee; Daily Journal, Kankakee, Illinois; Joliet Herald, Joliet, Illinois; Decatur Daily, Decatur, Alabama; and Franklin County Times, Russellville, Alabama. In response to two formal requests, a public hearing on the proposal to list *Dalea foliosa* as an endangered species was held on October 16, 1990, at Columbia State Community College in Columbia, Tennessee. A notice of the hearing and reopening of the comment period to November 1, 1990, was published in the **Federal Register** on October 1, 1990 (55 FR 39988). The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together. These issues and the Service response to each, are discussed below.

Nine written responses to the proposed rule were received during the initial comment period. Three State agencies, one county agency, one city official, and four private individuals or organizations provided comments.

The Illinois State Natural History Survey Division, the Illinois Department of Conservation, and the Forest Preserve District of Will County, Illinois, strongly supported the addition of leafy prairie-clover to the Federal list of endangered species, provided additional information on the status of the species in Illinois, and provided updated information on conservation activities in Illinois. The Service has incorporated the additional information on the status and conservation of the species, as appropriate, into this document.

Three individuals and the Center for Plant Conservation supported the proposed addition of the species to the Federal list of endangered species or requested additional information on the species. The Service provided the requested information.

The Tennessee Upper Duck River Development Agency and the City of Columbia, Tennessee, requested a public hearing on the Service's proposal but provided no comments on the proposal in their requests.

The public hearing on the proposed rule to list leafy prairie-clover as an endangered species was held on October 16, 1990, in the auditorium of the Clement Building at Columbia State Community College, Columbia, Tennessee. Seven verbal statements were made at the public hearing, and six written statements were provided, three of which were copies of verbal statements given. Eighteen written comments were received during the comment period extension.

Statements at Public Hearing

The Mayor of the City of Columbia expressed opposition to the proposed addition of leafy prairie-clover to the Federal list. The Mayor also suggested that in lieu of Federal protection the Service permit area residents to cultivate the species and thereby ensure that it does not become extinct. The Service believes that cultivation of leafy prairie-clover without protecting the natural ecosystems upon which it depends would not meet the requirements of the Act. One of the Act's primary purposes, as stated in section 2(b) of the Act, is "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." Cultivation of endangered and threatened species can be a positive conservation tool, and it is often listed as a task to be completed before recovery can be achieved. However, the

purpose of this cultivation is to ensure that, if the species is lost from the wild, plants will be available to reintroduce the species back into the natural ecosystem. Additionally, cultivation of endangered and threatened species can provide wildflower gardeners with a source of rare plants for home gardens without adversely affecting the species in the wild.

The Columbia City Manager endorsed efforts to preserve leafy prairie-clover provided that those efforts did not impede the completion of the proposed Columbia Dam. The City Manager concurred that the species is rare, but did not believe it should be listed unless other conservation efforts, such as those proposed by the Mayor, prove inadequate. He also endorsed the Mayor's proposal to cultivate the species. The Service response to the cultivation issue is provided above. The Columbia Dam project and its potential effects on the plant are discussed in the "Summary of Factors Affecting the Species" section of this rule. The procedures followed by the Service in reviewing the potential impact of Federal projects on listed species are outlined in the "Available Conservation Measures" section of this rule.

The Chairman, Board of Directors, Upper Duck River Development Agency (Agency) stated that, based upon the information provided by their consultant, he did not believe that leafy prairie-clover needed Federal protection to ensure its survival. The Service, however, believes that Federal protection for leafy prairie-clover is merited based upon the information outlined in the "Summary of Factors Affecting the Species" section of this rule.

The Agency's Executive Director stated that the Agency supported ensuring that species do not become extinct and would attempt to take any actions necessary to ensure that end. He also stated that, based on information in the public record, he believed leafy prairie-clover is in better condition now than it was historically. The Service does not concur with this conclusion based upon the information provided in the "Background" and "Summary of Factors Affecting the Species" sections of this rule.

The Agency's consultant stated that, based on his review of the available data, he concurred that leafy prairie-clover is indeed a rare and sporadically occurring species. However, he believed the species was not threatened, was likely more common than present distribution data suggest, and argued that it did not need Federal protection. He stated that the species can remain dormant during adverse climatic conditions, and this may account to some degree for the sporadic nature of its distribution. He noted that, based on work performed in Illinois and elsewhere, the leafy prairie-clover is easily cultivated and has seeds that often germinate several years after they fall to the soil. He stated that there appeared to be more individuals of the species now than previously reported and that at least one population in each State is protected through public ownership. In conclusion, he stated that if there is concern about the species' survival, the Service should cooperate with the Mayor's suggested volunteer citizen cultivators to ensure that the species does not disappear. The Service does not concur with the consultant's conclusions regarding the present vulnerability of the species. Based upon the data outlined in the "Background" and "Summary of Factors Affecting the Species" sections of this rule, it is the Service's conclusion that the leafy prairie-clover qualifies for protection under the Act. The observed rarity and sporadic distribution cannot be fully accounted for merely by the species' ability to remain dormant during drought and other adverse climatic conditions. In Illinois the species was originally known from six counties. It is now restricted to three sites in one county. In Alabama, two of the four known sites have been destroyed, and in Tennessee most sites are small and vulnerable to loss due to the factors discussed in the rule sections referenced above. Although the species is readily cultivated, several attempts in Illinos to reintroduce the species to a site have been unsuccessful (De Mauro *in litt.*). The range of environmental requirements for successful reestablishment in the wild is not fully understood and will require additional research before anyone can reintroduce the species with confidence that the reintroduction will be successful.

One private individual supported listing of the species and supported completion of the Columbia Dam project. Another private individual stated that the population in the Columbia Dam project area could be better managed if the dam were completed.

Written Statements Received After the Public Hearing

Eighteen written comments were received during the comment extension period—3 from State or county agencies, 1 from a private conservation organization, and 14 from private individuals.

The Tennessee Department of Conservation supported protection of leafy prairie-clover under the Act and provided additional information on the distribution of the species in Tennessee. The Forest Preserve District of Will County, Illinois, reiterated their support for the species' proposed addition to the Federal endangered species list and provided additional information on the current species' status in Illinois and their efforts to reintroduce the species in the wild. The Service concurs with the conclusion that the species merits addition to the Federal list. The information on the status of the species and reintroduction efforts has been incorporated, where appropriate, into this rule.

The Agency's Executive Director expressed regret that they had not been allowed to accompany the group that surveyed the proposed Columbia Dam project area population in June 1990. It was not the Service's intent to exclude the Agency from the site visit; through an oversight by the Service, the Agency was not notified of the planned survey. As soon as the oversight was brought to the Service's attention, a Service representative provided an Agency employee with a tour of the site. The Executive Director and another individual pointed out that the written survey report (Wofford and Baskin 1990) stated that this population contained 630 individuals while a Service employee stated at the public hearing that the population contained 750–1,000 individuals. The Service believes that the correct figure for the size of this population is 630, and the employee's statement at the hearing was in error. The Executive Director stated that it was his belief that the Service did not want help from others in meeting its responsibilities under the Act. This belief was based upon the Service's reluctance to utilize cultivation rather than Federal listing to protect leafy prairie-clover. The Service does not believe that cultivation is appropriate in lieu of listing for the reasons stated above. The Service recognizes the value of and welcomes the conservation efforts made by the private sector and Federal, State, county, and city governments and agencies. However, these efforts must contribute to species' conservation and meet the goals of the Act. Cultivation without habitat protection does not contribute to conservation of the species or meet the mandates of the Act.

The Executive Director questioned why the Service chose to propose the leafy prairie-clover from the extensive list of category 1 species in the February

21, 1990, notice to review plant taxa for listing as endangered or threatened species (55 FR 6184). The decision to propose this plant was based upon the threats to the species, its limited distribution, availability of data on its status, and the support for the action expressed by the State conservation agencies responsible for the protection of the flora in their respective States. In conclusion, the Executive Director offered the Agency's assistance in protecting leafy prairie-clover. The Service appreciates their willingness to conserve this species and looks forward to a successful effort to ensure that the population managed for TVA by the Agency is not lost.

One individual expressed concern about past difficulties in meeting the Act's requirements for conserving endangered and threatened species, specifically the limited amount of money available for these efforts. The Service acknowledges that the present needs for protection and recovery of listed species exceed the currently available funds. However, availability of recovery funds is not a criterion used to determine if listing is warranted. He suggested that the Service move all of the known leafy prairie-clovers now growing on cedar glades to shallow-soiled prairie sites because, if left undisturbed, most cedar glades will eventually be covered so densely with cedars that leafy prairie-clover will be shaded out. The Service recognizes that the vegetation at the cedar glade populations will need to be managed in order to ensure that the habitat remains suitable for leafy prairie-clover and other rare cedar glade species. It should be noted that the populations occurring on shallow-soiled prairies also require management in order to maintain the habitat in a condition conducive to leafy prairie-clover. In conclusion, this individual stated that he believed the Service wanted to use the leafy prairie-clover to stop the Columbia Dam project. The Service responds that the purpose of Federal listing is not to stop projects but to ensure that species do not become extinct. The Service is generally able to work with project advocates to both protect the species and allow for project objectives to be met. The criteria for adding species to the Federal list are contained in Section 4 of the Act. These criteria, as they relate to the currently known status of leafy prairie-clover, are specifically addressed in the "Summary of Factors Affecting the Species" section of this rule. This project and its relationship to federally listed endangered species is addressed in Section A of this summary. Section 7 of the Act, which addresses consultation with Federal agencies to protect listed species, is addressed in the "Available Conservation Measures" section of this rule.

Three individuals and a conservation organization expressed support for the proposed addition of leafy prairie-clover to the Federal list.

Ten individuals expressed opposition to the proposed addition of leafy prairie-clover to the Federal list stating their belief that it is more numerous than is currently known or that with the currently known populations it is not actually endangered. Most also expressed support for the completion of the Columbia Dam project. The Service believes that the current information on the status of leafy prairie-clover is accurate and reflects the actual distribution of the species. Additional populations may be found in the future; however, it is not anticipated that the discovery of additional sites will significantly affect the species' status. The Columbia Dam project and its relationship to this species is addressed above.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that leafy prairie-clover should be classified as an endangered species. Procedures found at Section 4(a)(1) of the act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement these listing provisions were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Dalea foliosa* (Gray) Barneby (leafy prairie-clover) (Syn: *Petalostemum foliosum* Gray) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Most of the known populations of Dalea foliosa are threatened with destruction or adverse modification of their habitat. The plant is best protected in Illinois, where two of the three known extant sites are being managed to protect the species. The third Illinois site could be adversely affected by construction of a proposed highway. However, with proper planning and appropriate care during actual construction, it should be possible to protect this population. A fourth Illinois population was recently destroyed; it is not known if the site can be acquired and the *Dalea foliosa* restored (De Mauro *in litt.*, Kurz and Bowles 1981).

The Franklin County, Alabama, population was apparently destroyed by a series of construction activities that included road-widening and associated construction and, later, installation of an underground pipeline (Cary Norquist, U.S. Fish and Wildlife Service, personal communication, 1989). The small Morgan County, Alabama, population is vulnerable to loss or alteration by residental construction or conversion to livestock pasture (Smith and Wofford 1980). It is not known what caused the extirpation of the species from Jefferson County. The Lawrence County site is within the right-of-way of a power transmission line managed by TVA, and with proper management this population should be secure.

Two of Tennessee's nine currently confirmed viable populations are partially protected. Most of the Williamson County population was acquired by The Nature Conservancy through donation and is protected from outright destruction by construction or other mechanical habitat alteration. A portion of this population is still privately owned and is thereby vulnerable to loss in the future.

The best and largest Tennessee population is located on land owned by the Tennessee Valley Authority (TVA) in Maury County. This site was acquired as a part of the proposed Columbia Dam project area. Completion of this project has been delayed while TVA has been pursuing a mussel conservation plan aimed at avoiding jeopardy to federally listed endangered mussels that inhabit the project impact area. Several alternatives to the original project are currently being evaluated by the TVA (Tennessee Valley Authority 1988). These alternatives could involve lower floodpool levels than originally proposed. Should they be chosen, the altered project would have no impact on the *Dalea foliosa* population. If the full-pool alternative is implemented, approximately 50 percent of the 630 plants in this Maury County population would be inundated.

Davidson County has four recorded occurrences for *Dalea foliosa*. One of these has recently been bulldozed in preparation for development of the site. The Tennessee Department of Conservation and the Center for Plant Conservation are attempting to put the few plants remaining at this location into cultivation in order to ensure that the genetic material they contain is not lost. Two sites discovered in 1985 are very small and have not been observed to support any plants since the original

discovery. The Service does not consider any of the Davidson County sites to be viable.

An early report that the species occurred in Knox County was apparently based on the collection of a specimen from a transplanted population. The species was not native to Knox County, and the transplanted population has died out.

All of the known *Dalea foliosa* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that produce shade and compete for limited water and nutrients. Active management is required to ensure that the species continues to survive at all sites. In Illinois, experiments on the use of fire to maintain the available habitat in a condition conducive to *Dalea foliosa* are being evaluated. The species does not survive intensive livestock grazing (Kral 1983), and this factor remains a threat at all but the three protected and the two urban populations. Direct destruction of habitat for commercial, residential or industrial development, and intensive right-of-way maintenance activities are the most significant threats to the species at this time (Smith and Wofford 1980).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Illinois Department of Conservation (D. Glosser *in litt.*) indicates that there is some horticultural interest in the species in their State. Most populations are very small and cannot support the collection of plants for scentific or other purposes. Inappropriate collecting for scientific purposes or as a novelty is a threat to the species.

C. Disease or Predation.

Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. The Inadequacy of Existing Regulatory Mechanisms.

Dalea foliosa is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act. This protects the species from taking without the permission of the landowner or land manager. In Illinois, the species is listed as endangered by the Illinois Department of Conservation's Order 154. Illinois law prohibits taking listed plants from the land of another without the written permission of the landowner. Selling or offering to sell listed plants or plant parts is also prohibited without a permit. In Alabama, the species does not receive any protection by the State. The Act will provide additional protection from taking for the population that occurs on Federal land, and to the other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate interstate commercial trade will also be provided.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The only other additional factors that threaten *Dalea foliosa* are the extended drought conditions which the species has faced during the past few years. The extremely dry summer of 1988 is probably responsible for the low survival rate of plants reintroduced to one of the Kankakee County, Illinois, locations. Only 6 of 105 plants transplanted to the site survived to the end of the summer. These conditions can be expected to be causing higher than normal mortality of seedlings in the natural populations and could, if they continue over an extended period of time, have an adverse effect on the survival of *Dalea foliosa*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. With only 14 relatively small populations, and most of these threatened with destruction or adverse modification of habitat, and with all populations in need of long-term management, the preferred action is to list *Dalea foliosa* as an endangered species rather than as a threatened species. An endangered species, as defined under section 3(6) of the Act, is a species that is in danger of extinction throughout all or a significant portion of its range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Most populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Taking of endangered plants, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, only one of the known populations is under Federal jurisdiction. Therefore, publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Dalea foliosa* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, it would not now be prudent to designate critical habitat for *Dalea foliosa*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All but one of the known populations of *Dalea foliosa* is on privately owned or State-owned land. One Tennessee population is on land owned by the Tennessee Valley Authority. Approximately 50 percent of this population is within the impoundment area of a proposed dam project. For further information on this project and its effects on *Dalea foliosa*, see the "Background" and "Summary of Factors Affecting the Species" sections of this rule. One of the Illinois populations is near the right-of-way of a federally funded highway. The Illinois

Department of Conservation and the Will County Forest Preserve District are working with the Illinois Department of Transportation to ensure that construction of the highway does not result in the loss or significant alteration of this population.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

Although the species is not common in cultivation or in the wild it has generated some commercial trading interest, and a limited number of trade permits may be sought and issued. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits should be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Asheville Field Office (see "Addresses" section).

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
*	*	*	*	*	*	
Dalea foliosa (=*Petalostemum foliosum*)	Leafy prairie-clover	U.S.A. (AL, IL, TN)	E	422	NA	NA
*	*	*	*	*	*	

Dated: April 10, 1991.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91–10264 Filed 4–30–91; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-90-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes Equipped With Escape Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A300, A310, and A300-600 series airplanes equipped with escape slides, which would require a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary. This proposal is prompted by a recent report of an incorrectly installed escape slide girt bar. This condition, if not corrected, could result in passengers' tripping over the raised bar and passengers being delayed during an emergency evacuation.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 91-NM-90-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-90-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Direction Générale de l'Aviation Civile (DGAC) which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A300, A310, and A300-600 series airplanes equipped with escape slides. There has been a recent report of an incorrectly installed escape slide girt bar which lifted four inches (100 mm) after deployment of one escape slide during a cabin evacuation training exercise. This condition, if not corrected, could result in passengers' tripping over the raised bar and passengers being delayed during an emergency evacuation.

Airbus Industrie has issued All Operators Telex (AOT) 25-01, dated July 30, 1990, which describes procedures for performing a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory and has issued Airworthiness Directive 90-218-120(B), dated November 28, 1990, addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this conditioin is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection of the escape slide girt bars for correct installation, and repair, if necessary, in accordance with the All Operators Telex previously described.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,215.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300, A310, and A300–600 series airplanes equipped with escape slides, certificated in any category. Compliance is required as indicated unless previously accomplished.

To prevent delayed passenger evacuation during an emergency, accomplish the following:

A. Within 30 days after the effective date of this AD, or prior to the accumulation of 300 hours time-in-service after the effective date of this AD, whichever occurs first, perform a close visual inspection of the escape slide girt bars for correct installation, in accordance with paragraph 4 of Airbus Industrie All Operators Telex (AOT) 25–01, dated July 30, 1990. If the girt bars are incorrectly installed, prior to further flight, repair in accordance with the AOT.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 91–10250 Filed 4–30–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–79–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped with Smiths Industries Altimeter Repeater Unit, Part No. 1205AM1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require modification of the Smiths Industries Altimeter Repeater Units. This proposal is prompted by reports of jamming of the baro set knob and the pilot's inability to adjust the baro setting. This condition, if not corrected, could result in the pilot not receiving accurate altitude data that is necessary for safe operation of the airplane.

DATES: Comments must be received no later than June 24, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, attention: Airworthiness Rules Docket No. 91–NM–79–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–79–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports of jamming of the baro set knob and the pilot's inability to adjust the baro setting. This condition, if not corrected, could result in the pilot not receiving accurate altitude data that is necessary for safe operation of the airplane.

British Aerospace has issued Service Bulletin ATP–34–40, dated October 20, 1990, which describes procedures for modification of the Smiths Industries Altimeter Repeater Units. The modification consists of installation of a hardened knobshaft and remounting of the micro switch. The British Aerospace service bulletin references Smiths Industries Aerospace and Defense Systems Service Bulletin 1205AM–34–756, dated August 20, 1990, for additional instructions. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the Smiths Industries Altimeter Repeater Units in accordance with the service bulletins previously described.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The modification parts will be supplied by Smiths Industries at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes, equipped with Smiths Industries Altimeter Repeater Units, Part Number 1205AM1, certificated in any category. Compliance is required within 120 days after the effective date of this AD, unless previously accomplished.

To ensure the pilot receives accurate altitude data, accomplish the following:

A. Install a hardened knobshaft Part Number AM10588, in place of Part Number AM10454, and remount the microswitch (Smiths Industries Modification No. 02), in accordance with British Aerospace Service Bulletin ATP-34-40, dated October 20, 1990.

Note: The British Aerospace service bulletin references Smiths Industries Service Bulletin 1205AM-34-756 for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on April 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-10251 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch 1

[Docket No. RM91-5-000]

Preferences at Relicensing of Units of Development; Extension of Time for Comments

April 24, 1991.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of inquiry; extension of time for initial and reply comments.

SUMMARY: On February 20, 1991, the Commission issued a Notice of Inquiry concerning preferences at relicensing of units of development (56 FR 8164, February 27, 1991). The dates for filing initial comments and reply comments are being extended at the request of the interested parties.

DATES: The date for filing initial comments is extended to May 29, 1991. The date for filing reply comments is extended to June 28, 1991.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208-0400.

SUPPLEMENTARY INFORMATION:

Extension of Time

April 24, 1991.

On April 19, 1991, Edison Electric Institute (EEI) filed a motion for an extension of time to file initial and reply comments in response to the Commission's Notice of Inquiry issued February 20, 1991, in the above-docketed proceeding. In its motion, EEI states that additional time is needed because of the complex nature of the subject matter addressed in the Notice of Inquiry and because EEI must coordinate the preparation of its comments with numerous, interested members, who are geographically dispersed and whose views on relevant questions must be integrated. On April 23, 1991, Pacific Gas and Electric Company filed a motion in support of EEI's request for additional time. On April 24, 1991, additional time was requested by Niagara Mohawk Power Corporation and the National Hydropower Association.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including May 29, 1991. Reply comments shall be filed on or before June 28, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10218 Filed 4-30-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-172-89]

RIN 1545-AN45

21-Day Holding Period for Bank Accounts Subject to Levy

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment regarding the surrender of property subject to levy in the case of banks. The Technical and Miscellaneous Revenue Act of 1988 provides that banks shall surrender deposits in taxpayers' accounts (including interest thereon) only after 21 days after service of a levy. The proposed regulations set forth the rules for compliance by banks, and also contain conforming amendments reflecting the new provision.

DATES: Written comments and requests for a public hearing must be received by June 17, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-172-89), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, 202-566-4557 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6332 of the Internal Revenue Code. The regulations reflect the amendment of section 6332 by section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647).

Explanation of Provisions

Section 6236(e)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647, 102 Stat. 3342) amended section 6332 of the Internal Revenue Code by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by adding new subsection (c). Section 6332(c) now provides that banks (as defined in section 408(n) of the Internal Revenue Code) shall surrender levied upon deposits, together with the interest accruing thereon, only after 21 days from the service of a levy. The legislative history of section 6332(c) indicates that the requirement of a 21-day holding period was intended to provide taxpayers an opportunity to notify the Internal Revenue Service of errors with respect to levied upon accounts.

The proposed regulations provide that a levy on a bank account applies to those funds on deposit at the time the levy is received, up to the amount of the levy. No withdrawals may be made against the funds reached by the levy during the 21-day holding period. The bank must surrender the deposits on the first business day following the 21st calendar day after receipt of the levy, unless the bank receives notification from the district director of a release of levy or unless the district director has requested an extension of the holding period. In addition, the bank must surrender any interest which accrued on the deposits under the terms of its agreement with its customer, but in no event must the bank surrender an amount greater than the amount of the levy. Any such interest is considered to be paid to the bank's depositor and must be reported by the bank to the Internal Revenue Service as interest paid to the depositor. The depositor may waive the 21-day holding period by notifying the bank of his or her intention to do so. However, where more than one depositor is listed as the owner of an account, all of the listed owners must agree to a waiver of the holding period. The proposed regulations set forth examples illustrating the requirements for compliance with section 6332(c) under various factual scenarios, and the proposed regulations define the term "bank" pursuant to section 408(n) of the Internal Revenue Code.

The proposed regulations further provide that the bank's depositor may notify the district director to whom the assessment is charged of any errors with respect to the levied upon account by telephone to the telephone number listed on the face of the notice of levy, so that the district director may undertake an expeditious review of the alleged error. The district director may require any supporting documentation necessary to undertake such a review. However, the proposed regulations clarify that the notification by telephone provided for in the regulations does not constitute or substitute for the filing by a third party of a written request for the return of wrongfully levied upon property.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Anne P. Rosselot, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects—26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

Par. 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.6332-1 is amended as follows:

§ 301.6332-1 [Amended]

1. In paragraph (a)(1) the language "and in § 301.6332-3, relating to property held by banks," is added immediately

following the language "endowment contracts," and immediately before the language "any person".

2. The heading of paragraph (a)(2) is revised to read as follows: "*Levy on bank deposits held in offices outside the United States.*"

3. In paragraph (b)(2), in the first sentence, the language "6332(c)(1)" is removed and the language "6332(d)(1)" is added in its place.

Par. 3. New section § 301.6332–3 is added to read as follows:

§ 301.6332–3 Surrender of property held by banks.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy which is held by banks. The provisions of § 301.6332–1 which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy on property held by banks.

(b) *Definition of bank.* For purposes of this section, the term "bank" means:

(1) A bank or trust company or domestic building and loan association incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions.

(2) Any credit union the member accounts of which are insured in accordance with the provisions of title II of the Federal Credit Union Act, 12 U.S. C. 1781 *et seq.*, and

(3) A corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(c) *21-day holding period*—(1) *In general.* When a levy is made on property which consists of deposits held by a bank, the bank shall surrender such deposits (not otherwise subject to an attachment or execution under judicial process) only after 21 calendar days after the date the bank receives the levy. During the 21-day holding period, the levy shall be released only upon notification to the bank by the district director of a decision to release the levy. If the bank does not receive such notification from the district director within the 21-day holding period, the bank must surrender the deposits, including any interest thereon (up to the amount of the levy) on the first business day after the 21-day holding period, unless the district director requests an extension of the holding period.

(2) *Payment of interest on deposits.* When a bank surrenders levied upon deposits at the end of the 21-day holding period (or at the end of any longer period as requested by the district director), the bank must include any interest which has accrued on the deposits prior to and during the holding period under the terms of the bank's agreement with its depositor, but the bank must not surrender an amount greater than the amount of the levy. If the deposits are held in a non-interest bearing account at the time the levy is made, the bank need not include any interest on the deposits at the end of the holding period. To the extent that interest is accrued on the deposits and surrendered to the district director at the end of the holding period, such interest is considered to be paid to the bank's customer and must be reported by the bank to the Internal Revenue Service as interest paid to the bank's depositor.

(3) *Transactions affecting accounts.* A levy on deposits held by a bank applies to those funds on deposit at the time the notice of levy is received, up to the amount of the levy, and is effective as of the time the notice of levy is received. No withdrawals may be made on levied upon deposits during the 21-day holding period.

(4) *Waiver of 21-day holding period.* A depositor may waive the 21-day holding period by notifying the bank of the depositor's intention to do so. Where more than one depositor is listed as the owner of a levied upon acount, all depositors listed as owners of the account must agree to a waiver of the 21-day holding period. If the depositor does waive the 21-day holding period, the bank must include with the surrendered deposits a notification to the district director that the depositor has waived the holding period.

(5) *Examples.* The provisions of this subsection may be illustrated by the following examples:

Example 1. On April 2, 1992, a notice of levy for an unpaid income tax assessment due from A in the amount of $10,000.00 is served on X Bank with respect to A's savings account. At the time the notice of levy is received, X Bank holds $5,000.00 on deposit in A's interest-bearing savings account. On April 24, 1992 (the first business day after the 21-day holding period), X Bank must surrender $5,000.00 plus any interest that accrued on the account under the terms of A's contract with X Bank up through April 23, 1992 (the last day of the holding period).

Example 2. Assume the same facts as in Example 1 except that on April 3, 1992, A deposits an additional $5,000.00 into the account. On April 24, 1992, X Bank must still surrender only $5,000.00 plus the interest which accrued thereon until the end of the holding period, since the notice of levy received on April 2, 1992, attached only to those funds on deposit at the time of receipt of the levy and not to any subsequent deposits.

Example 3. Assume the same facts as in Example 1 except at the time X Bank receives the notice of levy, A's savings account contains deposits in the amount of $50,000. On April 24, 1992, X Bank must surrender $10,000, which is the amount of the levy. The levy will not apply to the interest which accrues on the $10,000 during the 21-day holding period, since the entire amount of the levy is satisfied by the deposits existing at the time the levy is served.

Example 4. Assume the same facts as in Example 1 except that the amount of the levy is $5,002.00. Under the terms of A's contract with the bank, the account will earn more than $2.00 of interest during the 21-day holding period. On April 24, 1992, X Bank must surrender $5,002.00 to the district director. The remaining interest which accrued during the 21-day holding period remains in A's savings account.

Example 5. On September 3, 1992, A opens a $5,000.00 six-month certificate of deposit account with X Bank. Under the terms of the account, the depositor must forfeit up to 30 days of interest on the account in the event of early withdrawal. On January 4, 1993, the bank receives a levy in the amount of $10,000.00 with respect to A's certificate of deposit account. On January 26, 1993, the bank must surrender $5,000.00 plus the interest which accrued on the account through January 25, 1993, minus the penalty of 30 days of interest.

(d) *Notification to the district director of errors with respect to levied upon bank accounts*—(1) *In general.* If a depositor who receives notification of a levy upon a bank account believes that there is an error with respect to the levied upon account which the depositor wishes to have corrected, the depositor shall notify the district director to whom the assessment is charged by telephone to the telephone number listed on the face of the notice of levy in order to enable the district director to conduct an expeditious review of the alleged error. The district director may require any supporting documentation necessary to the review of the alleged error. The notification by telephone provided for in this section does not constitute or substitute for the filing by a third party of a written request under § 301.6343–1(b)(2) for the return of property wrongfully levied upon.

(2) *Disputes regarding the merits of the underlying assessment.* This section does not constitute an additional procedure for an appeal regarding the

merits of an underlying assessment. However, if in the judgment of the district director a genuine dispute regarding the merits of an underlying assessment appears to exist, the district director may request an extension of the 21-day holding period.

(3) *Notification of errors from sources other than the depositor.* The district director may take action to release the levy on the bank account based on information obtained from a source other than the depositor, including the bank in which the account is maintained.

(e) *Effective date.* These provisions are effective with respect to levies issued on or after May 31, 1991.

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

[FR Doc. 91-10178 Filed 4-30-91; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 715]

RIN 1512-AA07

Texas Hill Country Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish a viticultural area located in south central Texas to be known by the appellation "Texas Hill Country." The proposal is the result of a petition filed by Mr. Hugo Edwin Auler of Fall Creek Vineyards. The approved viticultural areas of "Bell Mountain" and "Fredericksburg in the Texas Hill Country" are located in the proposed area. AFT believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

DATE: Written comments must be received by June 17, 1991.

ADDRESSES: Send written comments to:

Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 REF: Notice No.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, AFT published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2), title 27 CFR outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/ or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy or copies of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently market.

Petition

AFT received a petition proposing a viticultural area in south central Texas to be known as Hill country. The proposal was submitted by Mr. Hugo Edwin Auler, on behalf of a group of winery and vineyard owners in the proposed viticultural area. Since the name "Hill Country" could apply to many areas, AFT suggested the name might be more meaningful to consumers outside the State of Texas if it were more specific. The petitioner subsequently amended the name to "Texas Hill Country."

The proposed viticultural area is located in south central Texas, with a land area of approximately 15,000 square miles. The petition indicates that the area known as "Hill Country" covers the eastern two-thirds of the Edwards Plateau. According to the petition, the Edwards Plateau lies north and west of the portion of the Balcones Fault which runs near the cities of San Antonio and Austin, respectively. The Balcones Fault, a significant geological fault which extends from Mexico into Texas and up to Canada, separates the Edwards Plateau from the Rio Grande Plains to the south and west and from the Blackland Prairies on the east and northeast. The Edwards Plateau is bounded on the north and northwest by the North Central or Low Rolling Plains. The petition states that the western portion of the Edwards Plateau is not included within the proposed viticultural area.

Evidence of Name

In An Insider's Guide to the Texas Hill Country, 1990 Edition, an article stated "the Texas Hill Country extends roughly as far west as Sonora; as far south as Uvalde and San Antonio; as far north as Menard, Brady, and Lampasas; and as far east as Austin and San Marcos." With the exception of Sonora, each of these towns and cities is located on the boundary of the proposed area. A brochure prepared by the Texas Hill Tourism Association, Experience it. The Texas Hill Country, features descriptions of towns within the proposed area, and a map which roughly coincides with the boundary described by the petitioner.

Viticultural History

The petitioner states that grape growing and wine making have existed on a small scale "for the better part of the last 150 years." However, vitis vinifera varieties have only been grown since the mid-1970's. There are currently ten wineries and 40 "commercial and/or significant experimental" vineyards in the proposed viticultural area, according to the petitioner. There are two approved viticultural areas which are entirely within the proposed area; both

are in Gillespie County, Texas. "Bell Mountain" consists of approximately 5 square miles on the south and southwest slopes of the mountain of the same name. The area is distinguished from the surrounding areas by its slightly acid soil and by the topographical limits of its location, which result in cooler and drier air than in the nearby valleys.

"Fredericksburg in the Texas Hill Country" is a 110 square mile "bowl" shaped area which ranges from 1500 to 1900 feet in elevation. Its altitude provides cooler night time temperatures in summer and a longer winter dormancy period. These features, along with soil composed of a sandy loam topsoil over a nutrient rich reddish clay, distinguish it from the immediately surrounding areas.

Proposed Boundary

Highways are used as the boundary for the proposed area. Evidence was presented by the petitioner that these man-made features closely follow a change in the geographical characteristics of the area. According to the petitioner, the southern and eastern portions of the boundary for the Texas Hill Country coincide with the portion of the Balcones Fault, "which crosses out of Mexico * * * just northwest of the city of Del Rio, Texas; then runs generally eastward to the north and west side of San Antonio, Texas; then runs northeastward to the west side of Austin, Texas." Although there is not such a clear natural boundary on the north and west sides of the proposed area, the U.S.G.S. maps provided by the petitioner reflect gradual leveling of the terrain near the highways which were proposed as boundaries.

As stated in the proposed § 9.136, the beginning and end point for the boundary of the proposed viticultural area is the intersection of U.S. Highway 183 and a highway with no route designation to the north of the city of Austin on the Austin, Texas U.S.G.S. map. As shown on the U.S.G.S. map, there is a gap in the undesignated highway as it proceeds in a southerly direction to the west of the city of Austin. The undesignated highway then resumes its course southwest of the city of Austin until it intersects with State Highway 71.

The petitioner has supplemented the Austin, Texas U.S.G.S. map (which was last revised in 1974), with an official highway travel map published by the Texas State Department of Highways and Transportation. This map shows that the undesignated highway referred to above is now designated as "Loop 360" and further indicates that the gap in the highway has been closed. In view of the fact that "Loop 360" has been completed since the last revision of the Austin U.S.G.S. map and since the petitioner has identified the completed "Loop 360" as coinciding with the relevant geographical characteristics of the area, this Notice proposes to accept the Texas State highway map as a supplement to the Austin, Texas U.S.G.S. map to show the path and route designation of the highway which forms the closing boundary of the proposed viticultural area.

Distinguishing Features

The petitioner provided the following evidence relating to features which distinguish the proposed viticultural area from the surrounding areas:

Topography

The petitioner states that the terrain of the proposed area varies from about 650 to 2550 feet above sea level. As indicated above, the Texas Hill Country covers the eastern two-thirds of the Edwards Plateau, which ends at the Balcones Fault. The petitioner asserts that the name Balcones (for balcony, in Spanish) is suggested by the pronounced drop in elevation from the Edwards Plateau to the Blackland Prairie, to the east of the proposed area. Furthermore, the petition states that the higher land of the southeast edge of the Edwards Plateau has been severely eroded by the flow of numerous rivers and streams, and that portions were raised by volcanic activity and geological upheavals. This has left the Texas Hill Country as "a region of low mountains, hills, canyons and valleys." The petitioner contrasts this hilly terrain with the surrounding areas (the Rio Grande Plains, the Blackland Prairies, and the North Central Plains) which are all characterized by flatter terrain.

Soils

According to the petitioner, "most of the hills of the region are limestone, sandstone or granite in nature, while the valleys usually contain varying types of sandy and/or clay loam, most of a calcareous nature, but many with different underlying characters due to the complex geology of the region." The petitioner enclosed a U.S. Department of Agriculture description of various soils in the area. According to this document, the main soil series associated with the eastern two-thirds of the Edwards Plateau (*i.e.*, the Texas Hill Country) are the Tarrant, Eckrant, Brackett and Tobosa, with Frio, Oakalla and Dev in the bottomlands. By way of comparison, the main soil series associated with the western portion of the Edwards Plateau are Ector, Upton and Reagan. In addition, the petition identifies Claresville, Elmendorf, Floresville, Miguel and Webb as the main soils associated with the Rio Grande Plains to the south of the proposed area. The Blackland Prairies to the east and northeast are comprised mainly of the Houston Black, Heiden, and Austin soil series, while the main soil series for the Low Rolling Plains to the north are Abilene, Rowena, Mereta, and Lueders.

Climate

The petitioner asserts that the climate of the Texas Hill Country is distinguished from the surrounding areas by a number of different factors. The Blackland Prairies and Rio Grande Plains which border the proposed area on the east and south are classified as "humid subtropical" characterized by "hot days, warm nights, and usually humid" weather. The petitioner attributes this to the influence of warm, moist winds off the Gulf of Mexico during the growing season. Since the Texas Hill Country is located further inland and at a higher altitude than the Blackland Prairies and Rio Grande Plains, the air is drier and has a "greater proclivity for giving up heat at night." The resulting cooler, drier nights within the proposed area are beneficial in the growing of vinifera grapes, according to the petitioner.

The petitioner further states the proposed area is subject to winds which "flow over the deserts of Chihuahua and Coahuila in Mexico and north over the Edwards Plateau and the Hill Country during much of the growing season." These desertlike winds subside and cool at night, and tend to "pool." Since the Texas Hill Country slopes from west to east, the cool, dry air which collects in the evening flows, or drains, across the area very rapidly, resulting in cooler nighttime temperatures. Although these same desert winds flow over the Low Rolling Plains to the north of the proposed area, the plains are "flat to rolling" in topography with the result that the air movement and nighttime cooling are less rapid than in the proposed area. Finally, the petitioner indicates that while the climate of the proposed area is similar to the rest of the Edwards Plateau, the proposed area is distinguishable in that it has a higher average rainfall. The petition states that the western portion of the Edwards Plateau averages 16 to 22 inches of rainfall per year, while the Texas Hill Country averages 24 to 28 inches per year.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, in view of the large size of the propsoed Texas Hill Country area, ATF is especially interested in receiving comments concerning the boundaries of the area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for dissclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal authors of this document are James A. Hunt and Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of subjects in 27 CFR part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of contents in subpart C is amended to add the title of § 9.136 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.136 Texas Hill Country.

Par. 3. Subpart C is amended by adding § 9.136 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.136 Texas Hill Country.

(a) *Name.* The name of the viticultural area described in this section is "Texas Hill Country."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Texas Hill Country" viticultural area are 7 U.S.G.S. (scale 1:250,000) maps. They are titled:

(1) Brownwood, Texas, 1954 (revised 1974);

(2) Sonora, Texas, 1954 (revised 1978);

(3) Llano, Texas, 1954 (revised 1975);

(4) Austin, Texas, 1954 (revised 1974);

(5) Del Rio, Texas, 1958 (revised 1969);

(6) San Antonio, Texas, 1954 (revised 1980);

(7) Seguin, Texas, 1953 (revised 1975).

(c) *Boundary.* The Texas Hill Country viticultural area is located in portions of McCulloch, San Saba, Lampasas, Burnet, Travis, Williamson, Llano, Mason, Menard, Kimble, Gillespie, Blanco, Hays, Kendall, Kerr, Edwards, Real, Bandera, Bexar, Comal, Guadalure, Medina, and Uvalde counties, in the State of Texas. The boundary is as follows:

(1) The beginning point is the intersection of U.S. Highway 183 and a highway with no route designation (subsequently designated Loop 360, according to the official highway travel map published by the Texas State Department of Highways and Transportation) to the north of the city of Austin, on the Austin, Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows U.S. Highway 183 in a northwesterly direction to the top of the Austin map and across the northeast corner of the Llano, Texas, U.S.G.S. map, to the intersection with State Highway 190 in Lometa, on the Brownwood, Texas, U.S.G.S. map;

(3) The boundary then follows State Highway 190 in a southwesterly direction through San Saba and Brady on the Brownwood map, to the intersection of U.S. Highway 83 at Menard, on the Llano, Texas, U.S.G.S. map;

(4) The boundary follows U.S. Highway 83 in a southerly direction to the town of Junction, where it meets U.S. Highway 377 (Llano map);

(5) The boundary then follows U.S. Highway 377 southwest to the town of Rocksprings, on the Sonora, Texas, U.S.G.S. map, where it meets State Highway 55;

(6) The boundary then follows State Highway 55 in a southeasterly direction across the southeast portion of the Del Rio, Texas, U.S.G.S. map, and continues to the town of Uvalde, on the San Antonio, Texas, U.S.G.S. map, where it meets U.S. Highway 83;

(7) The boundary then follows U.S. Highway 83 south for approximately 2 miles, until it meets U.S. Highway 90;

(8) The boundary then follows U.S. Highway 90 east across the San Antonio map to its intersection with Loop 410 in the city of San Antonio;

(9) The boundary then follows Loop 410 to the west of San Antonio, until it meets Interstate Highway 35;

(10) The boundary then follows Interstate Highway 35 in a northeasterly direction across the San Antonio map and then across the northwest corner of the Sequin, Texas, U.S.G.S. map until it meets State Highway 71 on the Austin, Texas, U.S.G.S. map;

(11) The boundary then follows State Highway 71 in a northwesterly direction approximately 3 miles, until a highway with no route designation (but designated as Loop 360 in the official highway travel map published by the Texas State Department of Highways and Transportation) diverges in a northwesterly direction from State Highway 71;

(12) The boundary follows the undesignated highway until it ends, then continues in an approximately semicircular path until it meets the continuation of that undesignated highway to the north. (The two sections of undesignated highway were connected and the entire stretch of highway was designated as Loop 360 after the 1974 revision of the Austin U.S.G.S. map, according to the official highway travel map published by the Texas State Department of Highways and Transportation. The boundary actually follows Loop 360.) The boundary follows this highway northeast, back to the beginning point at the intersection with U.S. Highway 183 north of Austin, on the Austin, Texas, U.S.G.S. map.

Approved: March 29, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-10221 Filed 4-30-91; 8:45 am]

BILLING CODE 4810-31-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 91-121; FCC 91-121]

Air-ground Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Proposal to add location and channel for Laurel Run, PA, and channels for Pittsburgh, PA; and Seattle, WA; to remove channels from Newark, NJ; Pittsburgh, PA; Seattle, WA; and Washington, DC; and to relocate a channel from Grand Canyon, AZ to Williams, AZ, in order to eliminate actual and potential interference and provide service to previously unserved areas to insure improved air ground service to the public.

DATES: Comments must be filed by June 17, 1991. Reply comments are due by July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew L. Nachby, Mobile Services Division, Common Carrier Bureau at (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Summary of Notice of Proposed Rulemaking

In view of the apparent need for air-ground communications service the Commission proposes to amend 47 CFR 22.521(b) to assign working channel 9 to Laurel Run, Pennsylvania and working channel 10 to Pittsburgh, Pennsylvania; to delete working channel 10 from Washington, DC, working channel 12 from Pittsburgh, Pennsylvania, working channel 9 from Newark, New Jersey, and working channel 9 from Seattle, Washington; to relocate working channel 12 from Grand Canyon, Arizona to Williams, Arizona.

Procedures for Amendment of Air-Ground Table of Allotments

The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in § 1.420 of the Commission's rules. The procedures are discussed below.

Cut-off Procedures

The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (See § 1.420(d) of the Commission's rules).

(b) Petitions for Rulemaking which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatment will be given so long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

Dates and Service

Under the procedures set out in §§ 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before June 17, 1991 and reply comments on or before July 2, 1991. All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (see § 1.420 (a)-(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

Number of Copies

Under § 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

Public Inspection of Filing

All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. Copies may be purchased from International Transcription Service, 2100 M Street, NW., First Floor, Washington, DC 20036, (202) 857-3800.

List of Subjects

47 CFR Part 22

Table of air ground radiotelephone service, Communications common carriers, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-10230 Filed 4-30-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-127, RM-6577; RM-7346; RM-7375; RM-7537; RM-7445]

Radio Broadcasting Services; Blackville, Branchville, Estill, Georgetown, Moncks Corner and Walterboro, SC, and Richmond Hill, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on five mutually exclusive or interrelated petitions for rule making for allotments in South Carolina and Georgia. Cedar Carolina Limited Partnership, licensee of Station WJYQ(FM), Moncks Corner, seeks the substitution of Channel 287C2 for Channel 288A at Moncks Corner, SC, and the modification of Station WJYQ(FM)'s license accordingly. Eutaw Broadcast Associates seeks the allotment of Channel 286A to Branchville, SC, as the community's first local FM service. Richmond Hill Broadcasting requests the substitution of Channel 287C3 for Channel 287A at Richmond Hill, Georgia, and the modification of Station WRHQ's construction permit to specify the higher

powered channel. To accommodate the requested allotments at Moncks Corner, Branchville and Richmond Hill, Cedar Carolina Limited Partnership, Eutaw Broadcast Associates and Richmond Hill Broadcasting also request the subsitution of Channel 249A for Channel 287A at Walterboro, SC, and the modification of TBJ Broadcasting Partnership's construction permit to specify the alternate Class A channel. Williams Communications requests the allotment of Channel 250C3 to Estill, SC, as the community's first local FM service, and the substitution of Channel 239A for unoccupied but applied for Channel 250A at Blackville, South Carolina. Coastline Communications of Carolina, Inc., requests the substitution of Channel 249C1 for Channel 249C2 at Georgetown, South Carolina, and the modification of its license for Station WBPR to specify the higher powered channel. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before June 17, 1991, and reply comments on or before July 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian M. Madden, Esq., Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036–1573 (Counsel to Cedar Carolina Limited Partnership); William E. Kennard, Esq., Michael E. Beller, Esq., Verner, Liipfert, Bernard, McPherson and Hand, Chartered, 901–15th Street, NW., Suite 700, Washington, DC 20005–2302 (Counsel to Richmond Hill Broadcasting); Robert C. Rickenbacker, Jr., President, Eutaw Broadcast Associates, P.O. Box 175, Holly Hill, South Carolina 29059 (Petitioner for Branchville); Edward W. Hummers, Jr., Esq., Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036–2679 (Counsel to Coastline Communications of Carolina, Inc); John E. Fiorini III, Esq., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750, Washington, DC 20005 (Counsel to Williams Communications).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–127, adopted April 17, 1991, and released April 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

The allotment of Channel 287C2 of Moncks Corner is mutually exclusive with the allotment of Channel 286A at Branchville, SC, and Channel 287C3 at Richmond Hill, GA. The allotment of Channel 249A to Walterboro conflicts with the allotment of Channel 249C1 to Georgetown, SC, and Channel 250C3 at Estill, SC. Channel 239A at Blackville, SC, does not conflict with any pending proposal.

Channel 287C2 can be allotted to Moncks, SC, with a site restriction of 30.1 kilometers (18.7 miles) south, at coordinates North Latitude 32–55–20 and West Longtitude 80–00–00. This allotment is proposed as a result of a petition for rule making filed prior to October 2, 1989. Therefore, if adopted, Cedar Carolina Limited Partnership may be able to avail itself of the provisions of Section 73.213(c) of the Commission's Rules. Channel 249A can be allotted to Walterboro, SC, at the transmitter site specified in TBJ Broadcasting Partnership's outstanding construction permit, at coordinates North Latitude 32–49–54 and West Longitude 80–43–30. Channel 286A can be allotted to Branchville, SC, without the imposition of a site restriction, at coordinates North Latitude 33–15–06 and West Longitude 80–49–00. Channel 250C3 can be allotted to Estill, SC, with a site restriction of 18.6 kilometers (11.6 miles) north at coordinates North Latitude 32–55–18 and West Longitude 81–15–52. Channel 239A can be allotted to Blackville, SC, without the imposition of a site restriction at coordinates North Latitude 33–21–48 and West Longitude 81–16–06. Channel 249C1 can be allotted to Georgetown, SC, with a site restriction of 35 kilometers (21.8 miles) northeast to accommodate petitioner's desired transmitter site, at coordinates North Latitude 33–35–27 and West Longitude 79–00–50. Channel 287C3 can be allotted to Richmond Hill, GA, with a site restriction of 19.3 kilometers (12 miles) northeast, at coordinates North Latitude 31–59–42 and West Longitude 81–06–40.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–10231 Filed 4–30–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Finding on a Petition To List the Lee Creek Population of the Fish, the Longnose Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding on petition.

SUMMARY: The Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners did not present substantial information that listing the Lee Creek population of the longnose darter (*Percina nasuta*) may be warranted. Although the threats to the Lee Creek population are sufficient to warrant concern about its continued existence, the Service finds that the population is not eligible for consideration for protection under the Endangered Species Act. Vertebrate populations are eligible for protection only if they are biologically distinct. The evidence suggests that the Lee Creek population is simply one subset of a larger undifferentiated gene pool occupying nine other streams.

DATES: The finding announced in this notice was made on June 22, 1990. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be sent to the Complex Field Supervisor, Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, suite 316, 300

Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: James H. Stewart at the above address (telephone: 601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982, (16 U.S.C. 1531 et seq.) requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the funding is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a finding on a petition to emergency list the Lee Creek population of the longnose darter, *Percina nasuta*, that was submitted by the Native Americans for a Clean Environment. The petition is dated September 29, 1989, and was received by the Service on October 4, 1989. The petition cited the known distribution as Lee Creek, Arkansas and Oklahoma, and, based on apparently incomplete research, indicated that the Lee Creek population was "* * * an entirely separate (sic) species from the single other known population of Longnose darter identified in Louisiana." In addition to citing the potential taxonomic difference, the petition cited the ongoing construction of a dam on Lee Creek that endangered "* * * the most significant sized population and habitat in the world for this species."

The Service has reviewed the petition and gathered other available scientific information through a search of the literature and communication with knowledgeable biologists. The longnose darter was described by Bailey in 1941 from the Middle Fork of the Little Red River, Searcy County, Arkansas (Bailey 1941). Subsequent populations were discovered in the drainages of the White River, Arkansas and Missouri; Spring, Strawberry, Fourche la Fave, Ouachita, Caddo, and Little Missouri Rivers of Arkansas; the Arkansas River, Arkansas and Oklahoma; and the St. Francis River, Missouri (Pflieger 1975, Thompson 1977, Buchanan 1984, Robison and Buchanan 1988). The population in Louisiana as cited in the petition is erroneous. The longnose darter has never been reported from Louisiana.

There is a question about the taxonomy of some populations of *Percina nasuta*. The Ouachita, Little Missouri, and Caddo Rivers populations are considered an undescribed species, now referred to as *Percina* sp. (Robison and Buchanan 1988, Dr. Bruce Thompson, Louisiana State University, pers. comm. 1990). A description of this form is in preparation. The taxonomic status of the Spring and Strawberry River populations is questionable and warrants further study (Buchanan 1984, Thompson, pers. comm., Dr. Henry Robison, Southern Arkansas University, pers. comm. 1990). Dr. Robison also states that the Fourche la Fave River form may be distinct from *Percina nasuta* at some taxonomic level.

The St. Francis River population of *Percina nasuta* has not been found since 1969 (Pflieger 1975) and may have been extirpated. This species has not been collected from the White River in Missouri since the impoundment of Table Rock Lake (Pflieger 1975). The known range of populations that are considered by Robison and Thompson to be *Percina nasuta* is the Middle Fork of the Little Red River, Arkansas; the headwaters of the White River and a tributary, War Eagle Creek, Arkansas; and the Arkansas River tributaries of Big Piney Creek, Illinois Bayou, and Mulberry River, in Arkansas, and Lee Creek, Arkansas and Oklahoma. Current scientific literature also attributes the Fourche la Fave, Spring, and Strawberry River forms to *Percina nasuta*, and under the requirements of the Act, must be considered as such. In summary, *Percina nasuta* is known from nine streams in addition to Lee Creek.

On the basis of the best scientific and commercial information available, the Service finds that this petition does not present substantial information indicating that the action requested may be warranted. For the Lee Creek population to be eligible for listing, it must be biologically distinct from other populations of *Percina nasuta*. There is no documentation to suggest that differences exist among the populations, nor is there any apparent need for emergency protection of the species when considered on a rangewide basis.

In the review of this petition, the Service has determined that *Percina nasuta*, as a species, warrants further review for protection under the Act. Information is needed on the current range and abundance of the species and the taxonomic question needs to be resolved. Over the next several months, the Service will gather information on the status of and threats to this species and seek to clarify the taxonomic issue. On the basis of this information, the status of the species will be reviewed and a determination made on the need for its protection.

References Cited

Buchanan, T.M. 1984. Status of the longnose darter, *Percina nasuta* (Bailey), in Arkansas. Report to Arkansas Natural Heritage Commission. 29 pp.

Pflieger, W.L. 1975. The fishes of Missouri. Missouri Dept. Conservation. p. 302.

Robison, H.W., and T.M. Buchanan. 1988. Fishes of Arkansas. Univ. Arkansas Press. p. 452–454.

Thompson, B.A. 1977. An analysis of three subgenera (*Hypohomus, Odontopholis* and *Swainia*) of the genus *Percina* (Tribe Etheostomatini, Family Percidae). PhD dissertation to Tulane University, 399 pp.

Author

This notice was prepared by James Stewart (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 4, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–10295 Filed 4–30–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 910492–1092]

Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of proposed harvest levels and notice of public meeting.

SUMMARY: Regulations on subsistence taking of northern fur seals require NMFS to publish a summary of the previous year's fur seal harvest and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. This notice summarizes the 1990 harvest and estimates the number of seals that may be taken in 1991.

Following a public meeting and the expiration of a 30-day public comment period, a final notice of harvest levels will be published before the start of the harvest season on June 30, 1991.

DATES: A public meeting will be held in Anchorage, Alaska, on May 29, 1991, at 9 a.m., and in Silver Spring, Maryland, on May 20, 1991, at 10 a.m. Written comments must be received on or before May 31, 1991.

ADDRESSES: The public meeting in Alaska will be held at the Federal Building, room 154, 222 W. 7th Avenue, Anchorage, Alaska. The public meeting in Maryland will be held at SSMC2, Second Floor Conference Room, 1325 East-West Highway, Silver Spring, Maryland. Written comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, 907–586–7235, Dr. Aleta A. Hohn or Lynne Harris, 301–427–2289.

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest of northern fur seals, *Callorhinus ursinus*, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes. Those regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of the regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilovians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes. As required by 50 CFR 215.32(b), this notice summarizes the 1990 harvest and estimates the number of seals that may be needed for subsistence in 1991.

Summary of Data on the 1990 Harvest Season

Subsistence harvesting of northern fur seals was conducted on St. George Island on 7 days between July 10, 1990, and August 7, 1990, and on St. Paul Island on 16 days between July 5, 1990, and August 8, 1990. During the 1990 season, a total of 164 seals were harvested on St. George Island and 1076 seals were harvested on St. Paul Island. An additional seal that died of heat stress subsequent to one of the harvests on St. Paul brought the total number of seals taken on that island to 1077. Since 1985, detailed information has been compiled on subsistence taking and use of seal meat on St. Paul Island only. No comparable information is available for St. George Island where, on average, less than 10 percent of the Pribilof subsistence harvest is conducted. The following table provides a comparison of the 1990 harvest data with summary information from previous years. Although these regulations prohibit the killing of female seals, small numbers were taken accidentally from 1985–1987. No females were killed in 1988–1990. Percent-use is the percent by weight of meat removed per carcass. The maximum possible percent use for food is about 53.3.

NMFS is concerned about the apparent decline in the efficiency of the 1989 and 1990 subsistence harvests on St. Paul Island compared to previous years. Detailed discussions of "substantial use" of seal meat and calculations and comparisons of percent-use estimates for harvests since 1985 can be found in the 1989 harvest notices (see especially 54 FR 23234, May 31, 1989, and 54 FR 32347, August 7, 1989). Comments and discussion are invited on this aspect of the subsistence harvest, as well as on the proposed harvest levels discussed below.

Estimated Number of Seals Needed for Subsistence in 1991

NMFS is required by its regulations to include in this notice a prediction of the fur seal harvest levels for 1991 that will satisfy the subsistence needs of the residents of the Pribilof Islands. Previous harvest levels, current economic conditions, and community population size need to be considered when establishing future harvest levels. A review of the previous years' subsistence usage on St. Paul Island indicates that over the last 5 years, harvest levels have fluctuated from a low of 1,077 (1990) to a high of 1,710 (1987). The average number of seals harvested over this time period was 1,314 (standard deviation = 246). Over the past 2 years, however, unemployment levels on St. Paul have increased from 20–30 percent to 60–80 percent, due to reductions in the city work force, completion of capital construction projects, and bankruptcies of local fish processing facilities. The population meanwhile, has remained relatively stable. Consequently, it is reasonable to expect that a larger number of seals may be required this year to satisfy the subsistence needs of the community. Trends in abundance of fur seals on St. Paul Island indicate that the population is stable and possibly increasing. Based on this information, NMFS proposes that the harvest level for northern fur seals on St. Paul Island in 1991 be set at 1314 seals. Should this quota be reached before August 8, 1991, the Aleut Community of St. Paul may request a specific number of additional seals for harvest that are necessary to satisfy the subsistence needs of the community. The additional number of seals to be made available for harvest in 1991 shall not exceed 246.

St. George Island seal harvests have ranged from a low of 92 (1987) up to a high of 181 (1989) over the past 5 years. The average number of seals harvested over this time period was 135 (standard deviation=37). The economic conditions that currently prevail on St. George Island are similar to those of St. Paul Island, and the population size has also remained stable. Trends in abundance of fur seals on St. George Island indicate that the fur seal population is declining. However, considering the age and sex classes being removed, i.e., subadult males, the subsistence harvest is not contributing to this decline. NMFS proposes to set the number of seals to be harvested on St. George Island in 1991 at 135. Should this quota be reached before August 8, 1991, the Aleut Community of St. George may request the harvest of a specific number of additional seals that are necessary to satisfy the subsistence needs of the community. The additional number of seals to be made available shall not exceed 37.

Dated: April 26, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

TABLE 1.—A COMPARISON OF 1990 LEVELS OF SUBSISTENCE HARVEST OF NORTHERN FUR SEALS WITH THAT OF THE PREVIOUS 5 YEARS FOR ST. PAUL ISLAND

	1985	1986	1987	1988	1989	1990
Number of harvest days	15	20	20	12	16	16
Number of seals taken	3,384	1,299	1,710	1,145	1,340	1,077
Number of females taken	5	9	6	0	0	0

TABLE 1.—A COMPARISON OF 1990 LEVELS OF SUBSISTENCE HARVEST OF NORTHERN FUR SEALS WITH THAT OF THE PREVIOUS 5 YEARS FOR ST. PAUL ISLAND—Continued

	1985	1986	1987	1988	1989	1990
Percent-use of carcasses	43.8	47.2	40.7	43.5	38.2	39.9
Pounds of meat taken	93,400	31,700	38,800	26,500	26,600	21,800

[FR Doc. 91-10288 Filed 4-30-91; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 26, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

- Agricultural Stabilization and Conservation Service, 7 CFR parts 1413 and 1414—Forms for Participation in Price Support and Production Adjustment Programs, CCC–477, 477 appendix, 477A, 477B, 505, 506, 507A, 406, 406, Appendix, ASCS–503, 658–1, Annually, Farms; 1,726,000 responses; 426,500 hours, Bruce Hiatt, (202) 245–4798.

Extension

- Forest Service, Interpretive Association Annual Report, FS–2300–5, Annually, Non-profit institutions; 60 responses; 60 hours, Gerald J. Coutant, (202) 447–6477.
- Foreign Agricultural Service, Product Review Application Form, FAS–633, On occasion, Businesses or other for-profit; 100 responses; 33 hours, Audrey B. Talley, (202) 475–3408.
- Food and Nutrition Service, Multi-Food Requisition, FNS–53, On occasion, State or local governments; 1,104 responses; 3,312 hours, Diane Berger or Robert DeLorenzo, (703) 756–3660.
- Food and Nutrition Service, Food Requisition, FNS–52, On occasion, State local governments; 9,072 responses; 18,144 hours, Diane Berger or Robert DeLorenzo (703) 756–3660.

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 91–10212 Filed 4–30–91; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Research Service

Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to EcoScience Laboratories, Inc., Amherst, Massachusetts, on U.S. Patent Application S. No. 07/618,437, "Biological Control of Postharvest Diseases of Pome Fruit with *Psuedomonas syringae* pr. *lachrymans*," filed November 27, 1990.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Send comments to: USDA–ARS—Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401–A, BARC–W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to EcoScience Laboratories, Inc., as exclusive license to practice the aforementioned invention. Notice of Availability was given in the Federal Register on February 1, 1991. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as EcoScience Laboratories, Inc., has submitted a complete and sufficient application for a license and is collaborating with the Agricultural Research Service under the terms of a Cooperative Research and Development Agreement providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,
Assistant Administrator.

[FR Doc. 91–10215 Filed 4–30–91; 8:45 am]
BILLING CODE 3410–03–M

Agricultural Stabilization and Conservation Service

1991–92 National Marketing Quota and Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1991 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1991 marketing quota for burley tobacco to be 726.0 million pounds and that the price support level for the 1991 crop would be $1.584 per pound.

EFFECTIVE DATE: January 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the ASCS nor the CCC are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1991 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1988, 1989, and 1990 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national reserve:
   A. For establishing marketing quotas for new farms, and
   B. For making corrections and adjusting inequities in old farms;
7. The national factor; and
8. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 319 of the 1938 Act provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1991 crop of burley by January 15, 1991. Six such manufacturers were required to submit such a statement for the 1991 crop and the total of their intended purchases for the 1991 crop was 510.5 million pounds.

The three-year average of exports is 167.6 million pounds.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1990 marketing quota for burley tobacco. The national marketing quota for the 1990 crop year was 602.3 million pounds (55 FR 29242). Accordingly, the reserve stock level for use in determining the 1991 marketing quota for burley tobacco is 90.3 million pounds.

As of January 25, 1991, the two loan associations had in their inventory 42.4 million pounds of the 1985-89 crops which remained unsold (net of deferred sales). The 1990 crop is expected to be nil. Accordingly, the adjustment to maintain loan stocks at the reserve supply level is an increase of 47.9 million pounds.

The total of the three marketing quota components for the 1991-92 marketing year is 726 million pounds. Section 319 of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Since the three-component total has already been increased substantially via the intentions component of the formula, the Secretary did not exercise his discretionary authority in determining the quota. Accordingly, the national marketing quota for the marketing year beginning October 1, 1991, for burley tobacco is 726.0 million pounds.

In accordance with section 319(c) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 1 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1991 crop of burley tobacco of 571,000 pounds is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1991 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(7)(A) of the 1949 Act provides that the level of support for the 1991 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1990 crop of burley tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(i) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in

which the average price was the lowest in such period, is greater or less than.

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, section 106(F)(7)(B) of the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II), is 3.7 cents per pound. The difference in the cost index from January 1 to December 31, 1990, is 4.4 cents per pound.

Applying these components to the price support formula (3.7 cents per pound, two-thirds weight; 4.4 cents per pound, one-third weight) result in a 3.9 cent increase in the level of price support from the previous year.

However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred due to supply and demand conditions for such kind of tobacco. An upswing in imports has helped to balance supply and demand. However, to maintain export markets and discourage additional overseas production, the Secretary used his discretion to limit the increase to 67 percent of the increase that otherwise would be established. Accordingly, the 1991 crop of burley tobacco will be supported at 158.4 cents per pound, 2.6 cents higher than in 1990.

The level of support and the national marketing quota for the 1991 burley marketing year was announced on February 1, 1991, by the Secretary of Agriculture. This notice affirms these determinations.

Determinations 1991–92 Marketing Year

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1991:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions to purchase for the 1991 year totaled 510.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 167.6 million pounds, based on exports of 164.0 million pounds, 168.7 million pounds and 170.0 million pounds for the 1988, 1989, and 1990 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 90.3 million pounds, based on 15 percent of 1990 national marketing quota of 602.3 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is plus 47.9 million pounds, based on a reserve stock level of 90.3 million pounds less anticipated loan stocks of 42.4 million pounds.

(e) *National marketing quota.* the national marketing quota is 726.0 million pounds, based on the three component total.

(f) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm marketing quotas for establishing marketing quotas for new farms has been determined to be 571,000 pounds.

(g) *National factor.* The national factor is determined to be 1.207.

(h) *Price support level.* The level of support for the 1991 crop of burley tobacco is 158.4 cents per pound.

Authority: 7 U.S.C. 1301, 1313, 1314c, 1375, 1445, 1421.

Signed at Washington, DC on April 25, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–10296 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–05–M

1991–92 National Marketing Quota and Price Support Level for Flue-Cured Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm determinations made by the Secretary of Agriculture with respect to the 1991 crop of flue-cured tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1991 marketing quota for flue-cured tobacco to be 877.7 million pounds and that the price support level for 1991 would be $1.528 per pound.

EFFECTIVE DATE: December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1991 marketing year for flue-cured tobacco the following:

1. The amount of domestic manufacturers intentions;
2. The amount of the average exports for the 1988, 1989, and 1990 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;

5. The amount of the national marketing quota;
6. The national average yield goal;
7. The national acreage allotment;
8. The national acreage reserve:
   A. For establishing acreage allotments for new farms, and
   B. For making corrections and adjusting inequities in old farms;
9. The national acreage factor;
10. The national yield factor; and
11. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government.

Marketing Quotas

Section 317(a)(1)(B) of the 1938 Act provides, in part, that the national marketing quota for a marketing year for flue-cured tobacco is the quantity of such tobacco that is not more than 103 percent nor less than 97 percent of the total of: (1) The amount of flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 317(a)(1)(C) further provides that, with respect to the 1990 through 1993 marketing years, any reduction in the national marketing quota being determined shall not exceed 10 percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(C) of the 1938 Act as the greater of 100 million pounds or 15 percent of the national marketing quota for flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1938 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1991 crop of flue-cured tobacco by December 1, 1990. Six such manufacturers were required to submit such a statement for the 1991 crop and the total of their intended purchases for the 1991 crop was 483.5 million pounds.

The three-year average of exports is 380.3 million pounds. For the 1990 quota determination, actual Census data was used. However, a 1989 Office of Inspector General investigation of General Sales Manager (GSM) program documents reported that certain tobacco shipments (both flue-cured and burley) that had been declared as U.S.-origin tobacco were actually foreign-grown. Accordingly, 1988 Census exports were adjusted downward to reflect this misclassification.

In accordance with section 301(b)(14)(C) of the 1938 Act, the reserve stock level is the greater of 100 million pounds or 15 percent of the 1990 marketing quota for flue-cured tobacco. The national marketing quota for the 1990 crop year was 877.7 million pounds (55 F.R. 36674). Accordingly, the reserve stock level for use in determining the 1991 marketing quota for flue-cured tobacco is 131.7 million pounds.

As of December 11, the Flue-Cured Tobacco Stabilization Corporation had in its inventory 140.8 million pounds of flue-cured tobacco (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment to maintain loan stocks at the reserve supply level is a decrease of 9.1 million pounds.

The total of the three marketing quota components for the 1991–92 marketing year is 854.7 million pounds. Section 317(a)(1)(B) of the 1938 Act further provides that the Secretary may increase or decrease the total by 3 percent. Because the Secretary determined that supplies were inadequate to satisfy export markets at the 854 million-pound quota level, he used his discretionary authority to increase the three-component total by about 2.7 percent. Accordingly, the national marketing quota for the marketing year beginning July 1, 1991 for flue-cured tobacco is 877.7 million pounds.

Section 317(a)(2) of the 1938 Act provides that the national average yield goal be set at a level, which on a national average basis, the Secretary determines will improve or insure the usability to the tobacco and increase that net return per pound to the growers. Since yields in crop year 1990 did not change significantly from the previous year, no change in the national average yield goal is contemplated at this time. Accordingly, it has been determined that the national average yield goal for the 1991–92 marketing year will be 2,088 pounds per acre, the same as last year.

In accordance with section 317(a)(3) of the 1938 Act, the national acreage allotment for the 1991 crop of flue-cured tobacco is determined to be 420,354.41 acres, which is the result of dividing the national marketing quota by the national average yield goal.

In accordance with section 317(e) of the 1938 Act, the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1991 crop of flue-cured tobacco of 918 acres is adequate for these purposes.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act.

With respect to the 1991 crop of flue-cured tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act. Section 106(f)(A) of the 1949 Act provides that the level of support for the 1991 crop of flue-cured tobacco shall be: (1) The level in cents per pound at which the 1990 crop of flue-cured tobacco was supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for flue-cured tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 25 cents per pound for the 1985 marketing year.

The difference between the two 5-year averages (the difference between (A)(I) and (A)(II) is 4.7 cents per pound. The difference in the cost index from January 1 to December 31, 1990 is 8.5 cents per pound. Applying these components to the price support formula (4.7 cents per pound, two-thirds weight; 8.5 cents per pound, one-third weight) result in an increase in the price support level of 6.0 cents per pound. However, section 106 further provides that the Secretary may limit the change in the price support level to no less than 65 percent of the change that otherwise would have occurred due to supply and demand conditions for such kind of tobacco. Supply and demand are reasonably in balance. However, in order to maintain export markets, the Secretary used his discretion to limit the increase to 67 percent of the increase that otherwise would have been. Acordingly, the 1991 crop of flue-cured tobacco will be supported at 152.8 cents per pound. 4.0 cents higher than in 1990.

The level of support for the 1991 crop of flue-cured tobacco and the national marketing quota for the 1991 flue-cured marketing year were announced on December 14, 1990 by the Secretary of Agriculture. This notice affirm these determinations.

Accordingly, the following determinations have been made for flue-cured tobacco for the marketing year beginning July 1, 1991:

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions for the 1991 year totaled 483.5 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 380.3 million pounds, based on exports of 358.3 million pounds, 387.6 million pounds and 395.0 million pounds for the 1988, 1989, and 1990 crop years, respectively.

(c) *Reserve stock level.* The reserve stock level is 131.7 million pounds, based on 15 percent of 1990's national marketing quota of 878 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is minus 9.1 million pounds, based on a reserve stock level of 131.7 million pounds and anticipated loan stocks of 140.8 million pounds.

(e) *National marketing quota.* The national marketing quota is 877.7 million pounds, based on 102.7 percent of the three component total of 854.7 million pounds.

(f) *National average yield goal.* The national average yield goal is determined to be 2,088 pounds.

(g) *National acreage allotment.* The national acreage allotment on an acreage-poundage basis is determined to be 420.354.41 acres. This allotment is determined by dividing the national marketing quota of 877.7 million pounds by the national average yield goal of 2,088 pounds.

(h) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to be 918 acres.

(i) *National acreage factor.* The national acreage factor is determined to be 1.0.

(j) *National yield factor.* The national yield factor is determined and announced to be .9268.

(k) *Types of tobacco.* It has been determined that types 11, 12, 13, and 14 shall constitute one kind of tobacco for the 1989–90, and 1990–91, 1991–92 marketing years. It has been determined also that no substantial difference exists in the usage or market outlets for any one or more of the types of flue-cured tobacco.

(l) *Price support level.* The level of support for the 1991 crop of flue-cured tobacco is 152.8 cents per pound.

Authority: Secs. 7 U.S.C. 1301, 1313, 1314c, 1375, 1445, 1421.

Signed at Washington, DC on April 25, 1991.

Keith D. Bjerke

Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–10297 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–05–M

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the Los Angeles (CA) and Little Rock (AK) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as Amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies, the Little Rock Grain Exchange Trust (Little Rock), and the Los Angeles Grain Inspection Service, Inc. (Los Angeles), will terminate, according to the Act, and requests applications from parties interested in being designated to provide official services in the specified geographic areas.

DATES: Applications must be postmarked on or before May 31, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services in a specified area after a determination is made that the applicant is better able than any other applicant to provide such official services.

Little Rock, located at 622 Main Street, North Little Rock, AR 72119, and Los Angeles, located at 1625 Bluff Road, Montebello, CA 90640, were designated to provide official inspection services under the Act on November 1, 1988.

The designations of these official agencies will terminate on October 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to Section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows:

In Arkansas:

Bounded on the North by the northern Arkansas State line from the western Benton County line east to the eastern Clay County line;

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Arkansas State line from the southern Miller County line north to the northern Benton County line.

In Texas: Bowie and Cass Counties.

An exception to Little Rock's assigned geographic area is the following location inside that area, which has been and will continue to be serviced by the following official agency: Memphis Grain and Hay Association: Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Los Angeles, in the State of California, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernardino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

Interested parties, including Little Rock and Los Angeles, are hereby given the opportunity to apply for official agency designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning November 1, 1991, and ending October 31, 1994. Parties wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91–10305 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Designation Applicant in the Denver (CO) Geographic Area

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests interested persons to submit comments on the applicant for designation in the Denver, Colorado, geographic area.

DATES: Comments must be postmarked on or before June 17, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202–447–4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service requested applications from persons interested in being designated to provide official services within the geographic area assigned to Hutchings, Inc., dba Denver Grain Inspection. Applications were to be postmarked by April 8, 1991. Randy J. McCormick, proposing to incorporate and to do business as Denver Grain Inspection, the only applicant, applied for the entire geographic area.

This notice provides to interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to this designation action. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier

Director, Compliance Division

[FR Doc. 91–10306 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the East Indiana (IN) Agency and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests interested persons to submit comments on the applicants for designation in the geographic areas currently assigned to East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Comments must be postmarked on or before June 17, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202–447–4628, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 1991, **Federal Register** (56 FR 9933), the Service requested applications for designation to provide official services within the East Indiana and State of Kansas geographic areas. Applications were to be postmarked by April 8, 1991. East Indiana and Kansas,

the only applicants, each applied for the entire area currently assigned to them.

This notice provides to interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent sustaining data for support or objection to this designation action. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91–10307 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–EN–F

Designation Renewal of the Memphis (TN) Agency and the State of Alaska (AK)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Memphis Grain and Hay Association (Memphis), and the Alaska Department of Natural Resources, Division of Agriculture (Alaska), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: June 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 3, 1990, **Federal Register** (55 FR 49926), the Service announced that the designations of Alaska and Memphis will terminate on May 31, 1991, and requested applications for designation to provide official services within the specified geographic areas. Applications were to be postmarked by January 2, 1991. Alaska and Memphis, the only applicants, each applied for the entire area currently assigned to them.

The Service named and requested comments on the applicants for designation in the February 6, 1991, **Federal Register** (56 FR 4787). Comments were to be postmarked by March 25, 1991. The Service received no comments by that deadline.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Alaska and Memphis are able to provide official services in the specified geographic areas.

Effective June 1, 1991, and terminating May 31, 1994, Alaska and Memphis are designated to provide official inspection services in the geographic areas specified in the December 3 **Federal Register**.

Interested persons may obtain official services by contacting Alaska at 907–376–3276 and Memphis at 901–942–3216.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91–10308 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–EN–F

Cancellation of Ohio Valley's Designation and Request for Designation Applicants to Provide Official Services in Portions of Indiana, Kentucky, and Tennessee

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces that James L. Goodge, Sr., dba Ohio Valley Grain Inspection (Ohio Valley), has requested cancellation of his designation, effective October 31, 1991. The notice also requests applications from parties interested in being designated to provide official services in the geographic area currently assigned to Ohio Valley.

DATES: Applications must be postmarked on or before May 31, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act) specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services in a specified area after a determination is made that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act.

Ohio Valley, located at Robin Hill Road, Plaza South, Newburgh, IN 47630, was designated to provide official inspection services on April 1, 1989, and its designation was scheduled to terminate on March 31, 1992. Ohio Valley requested voluntary cancellation of its designation, effective October 31, 1991.

The geographic area presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows:

Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties, Indiana;

Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties, Kentucky; and

Cheatham, Davidson, and Robertson Counties, Tennessee.

Interested parties are hereby given an opportunity to apply for official agency designation to provide official services in the Ohio Valley geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Ohio Valley geographic area is for the period beginning November 1, 1991, and ending October 31, 1994. Parties wishing to apply for designation should contact the

Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Ohio Valley geographic area.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 24, 1991.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 91–10309 Filed 4–30–91; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. This action is necessary to implement the Secretary of Agriculture's rule amending the Forest Service administrative appeal procedures, which was published in the **Federal Register** on February 6, 1991. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 30, 1991. The list of newspapers will remain in effect until October 1991, when another notice will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Stephen Solem; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone (406) 329–3200.

SUPPLEMENTARY INFORMATION: On February 6, 1991, the Secretary of Agriculture signed a rule amending the administrative appeal procedures 36 CFR 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing, and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter, the date of the decision, the name and title of the official making the decision, and how to obtain copies of the decision. In addition, the notice is to state that the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:
The Missoulian, Missoula, Montana
Great Falls Tribune, Great Falls, Montana
The Billings Gazette, Billings, Montana
Regional Forester decisions in Northern Idaho and Eastern Washington:
The Spokesman Review, Spokane, Washington
Regional Forester decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota
Regional Forester decisions in South Dakota
Rapid City Journal, Rapid City, South Dakota

Montana National Forests

Beaverhead National Forest

Beaverhead Forest Supervisor decisions:
Montana Standard, Butte, Montana
Wise River Ranger District decisions:
Montana Standard, Butte, Montana
Wisdom Ranger District decisions:
Montana Standard, Butte, Montana
Sheridan Ranger District decisions:
Montana Standard, Butte, Montana
Madison District Ranger Decisions:
Montana Standard, Butte, Montana
Bozeman Chronicle, Bozeman, Montana

Bitterroot national Forest

Bitterroot Forest Supervisor and Ranger District decisions:
Ravalli Republic, Hamilton, Montana

Clearwater National Forest

Clearwater Forest Supervisor and District Ranger decisions:
Lewiston Morning Tribune, Lewiston, Idaho

Custer National Forest

Custer Forest Supervisor decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota
Custer Forest Supervisor decisions in South Dakota:
Rapid City Journal, Rapid City, South Dakota
Custer Forest Supervisor decisions in Montana:
Billings Gazette, Billings, Montana
Sheyenne District Ranger decisions:
Fargo Forum, Fargo, North Dakota
Beartooth District Ranger decisions:
Carbon County News, Red Lodge, Montana
Sioux District Ranger decisions:
Nation's Center News, Buffalo, South Dakota
Ekalaka Eagle, Ekalaka, Montana
Ashland District Ranger decisions:
Billings Gazette, Billings, Montana
Grand River District Ranger decisions:
Lemmon Leader, Lemmon, South Dakota
Adams County Record, Hettinger, North Dakota
Medora District Ranger decision:
Dickenson Press, Dickinson, North Dakota
McKenzie District Ranger decisions:
Williston Daily Herald, Williston, North Dakota

Deerlodge National Forest

Deerlodge Forest Supervisor and Ranger District decisions:
Montana Standard, Silver Bow County Montana

Flathead National Forest

Flathead Forest Supervisor and District Ranger decisions:
The Daily Inter Lake, Kalispell, Montana (Only in the Sunday Edition)

Gallatin National Forest

Gallatin Forest Supervisor decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Bozeman District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Hebgen Lake District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
West Yellowstone News, West Yellowstone, Montana
Livingston District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Livingston Enterprise, Livingston, Montana
Gardiner District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Livingston Enterprise, Livingston, Montana
Big Timber District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana
Big Timber Pioneer, Big Timber, Montana

Helena National Forest

Helena Forest Supervisor and District Ranger decisions:
Independent Record, Helena, Montana

Idaho Panhandle National Forests

Idaho Panhandle Forest Supervisor and District Ranger decisions:
Spokesman Review, Spokane, Washington

Coeur d'Alene Press
Coeur d'Alene, Idaho

Kootenai National Forest

Kootenai Forest Supervisor decisions:
Western News, Libby, Montana
Tobacco Valley News, Eureka, Montana
Sanders County Ledger, Thompson Falls, Montana
Bonners Ferry Herald, Bonner Ferry, Idaho
Rexford District Ranger decisions:
Tobacco Valley News, Eureka, Montana
, Fortine District Ranger decisions:
Tobacco Valley News, Eureka, Montana
Western News, Libby, Montana
Daily Inter Lake, Kalispell, Montana
Three Rivers District Ranger decisions:
Western News, Libby, Montana
Bonners Ferry Herald, Bonners Ferry, Idaho
Libby District Ranger decisions:
Western News, Libby, Montana
Fisher River District Ranger decisions:
Western News, Libby, Montana
Cabinet District Ranger decisions:
Sanders County Ledger, Thompson Falls, Montana

Lewis and Clark National Forest

Lewis and Clark Forest Supervisor decisions:
Great Falls Tribune, Great Falls, Montana
Rocky Mountain District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Choteau Acantha, Choteau, Montana
Sun Valley Sun, Augusta, Montana
Glacier Reporter, Browning, Montana
Judith District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Judith Basin Press, Stanford, Montana
News Argus, Lewiston, Montana
River Press, Fort Benton, Montana
Independent Record, Helena, Montana
Billings Gazette, Billings, Montana
Meagher County News, White Sulphur Springs, Montana
Havre Daily News, Havre, Montana
The Eagle, Stockett, Montana
Musselshell District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Times Clarion, Harlowton, Montana
Billings Gazette, Billings, Montana
Kings Hill District Ranger decisions:
Great Falls Tribune, Great Falls, Montana
Meagher County News, White Sulphur Springs, Montana
The Eagle, Stockett, Montana

Lolo National Forest

Lolo Forest Supervisor decisions:
Missoulian, Missoula, Montana
Missoula District Ranger decisions:
Missoulian, Missoula, Montana
Ninemile District Ranger decisions:
Missoulian, Missoula, Montana
Seeley Lake District Ranger decisions:
Missoulian, Missoula, Montana
Plains/Thompson Falls District Ranger decisions:
Sanders County Ledger, Thompson Falls, Montana
Superior District Ranger decisions:
Mineral Independent, Plains, Montana

Nezperce National Forest

Nezperce Forest Supervisor decisions:
Idaho County Free Press, Grangeville, Idaho
Salmon River District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Clearwater District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Red River Ranger District decisions:
Idaho County Free Press, Grangeville, Idaho
Moose Creek Ranger District decisions:
Idaho County Free Press, Grangeville, Idaho
Selway District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho
Clearwater Progress, Kamiah, Idaho

Dated: April 24, 1991.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 91-10182 Filed 4-30-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3:30 p.m. on Wednesday, June 5, 1991, at the Federal Building, room 139, 701 "C" Street, Anchorage, Alaska 99513. The purpose of the meeting is to plan Committee projects and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Rosalee Walker, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 1991.

Carol-Lee Hurley;

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-10234 Filed 4-30-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey--October 1991 School Enrollment Supplement.

Form Number(s): CPS-1.

Agency Approval Number: 0607-0464.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 7,125 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: Seven and one-half minutes.

Needs and Uses: This supplement to the October collection of the Current Population Survey (CPS) is collected annually from the entire CPS sample. It provides basic information on enrollment status of various segments of the population for persons 3 years and older enrolled in nursery school/kindergarten, elementary school, high school, college, and vocational/technical schools. These data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10028 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for

collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Company Organization Survey.

Form Number(s): NC–9901, NC–9907.

Agency Approval Number: 0607–0444.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 76,899 hours.

Number of Respondents: 93,000.

Avg Hours Per Response: 50 minutes.

Needs and Uses: The Bureau of the Census uses the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of companies containing such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. The basic purposes of the SSEL are to (1) provide a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; (2) provide a standard basis for assigning SIC codes to establishments engaged in all areas of economic activity; and (3) provide establishment level data from multiestablishment companies that are summarized and published in the annual County Business Patterns series of reports. The updated SSEL provides a current directory of business locations for use in economic monthly, quarterly, and annual surveys, most of which are conducted on a sample basis. It is also used to develop the mailing list for the economic censuses. Government agencies use the tabulated data in various economic development programs, and businesses use it for economic analysis and planning.

Affected Public: Businesses or other for–profit organizations; Non–profit institutions; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–10030 Filed 4–30–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Cognitive Research and Development Program for the Survey of Income and Program Participation.

Form Number(s): SIPP–11100(X)A, SIPP–11105(X)A.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,680 hours.

Number of Respondents: 1,680.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census has devised this data collection to reduce measurement errors in the Survey of Income and Program Participation (SIPP) by improving the SIPP questionnaire and interviewing procedures. The Bureau is seeking OMB approval to use revisions of the SIPP 1991 Panel Wave 1 form to test the quality of answers given by respondents against actual employment and income data for a portion of the study. We will conduct 2 feasibility studies of 100 respondents each, revising the form and procedures as required. Using the results of the feasibility studies, The Bureau will conduct an evaluation study of 600 respondents (300 each) to compare the quality of responses obtained using the cognitive strategy to those using standard procedures. The research program will also test the feasibility of introducing the redesigned questionnaire and interviewing procedures with the implementation of the SIPP sample redesign scheduled for 1995.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 23, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–10031 Filed 4–30–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Pilot Survey for Local Education Agency Financial Information, 1990.

Form Number(s): F–33(Pilot).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 625 hours.

Number of Respondents: 50.

Avg Hours Per Response: 1 hour and 15 minutes.

Needs and Uses: The Bureau of the Census presently collects data on the finances of local education agencies in the Survey of Local Government Finances (School Systems) [OMB number 0607-0700]. The Census Bureau will use this pilot survey to determine if selected additional data is available on the finances of local school systems. State education agencies will be asked to report for a sample of the local school systems under their jurisdiction. The additional data is needed by the National Center for Economic Statistics to satisfy requirements of data users such as Congress, State and local education agencies, universities, Federal Government agencies, and research groups.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to

Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10299 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1990 Re-interview of Participants in the Survey of 1990 Census Participation.

Form Number(s): D-1406(A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 620 hours.

Number of Respondents: 2,478.

Avg Hours Per Response: 15 minutes.

Needs and Uses: One of the guidelines for considering whether a statistical adjustment should be made to the 1990 Census stipulates that the Census Bureau consider the effects of such a decision on participation in future censuses. Currently, there are no data available to predict what effects a decision to adjust or not to adjust the census figures would have on the public's participation in future censuses. To meet this information need, the Bureau proposes a telephone re-interview of 2,478 households from the Survey of 1990 Census Participation. Items in the proposed survey question the public's awareness of the adjustment issue, the perceived effects of adjusting or not adjusting the 1990 census on participation in the next census, and their likelihood of participating given the adjustment decision, both in isolation and in comparison with other conditions or circumstances.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-10300 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Change in Administrative Protective Order Practice

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of change in administrative protective order practice.

SUMMARY: The Department of Commerce will no longer contact parties to antidumping and countervailing duty proceedings prior to issuing amendments to administrative protective orders.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Carrella Q. Jubilee, Office of the Deputy Assistant Secretary for Compliance, Import Administration, U.S. Department of Commerce, room 3069A, Washington, DC 20230: telephone: (202) 377-5289, or Ann M. Sebastian, Office of the Deputy Assistant Secretary for Investigations, Import Administration, U.S. Department of Commerce, room 3099, Washington, DC 20230; telephone: (202) 377-3354.

SUPPLEMENTARY INFORMATION: This is to notify the public that, effective thirty days from the date of publication of this notice, the Department will no longer contact parties by telephone to determine if they have any objections to amendments to administrative protective orders. Parties are on notice that an amendment to an administrative protective order has been requested when they are served with a copy of the request. Parties who wish to object to a request for an amendment to an administrative protective order should do so in a timely manner in order for the Department to rule on a requested amendment within fourteen days of the request.

When an amendment to an administrative protective order is granted, the Department will place the amended administrative protective order in the pertinent public file in Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10261 Filed 4-30-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review: Certain Continuous Cast Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments; Certain Continuous Cast Steel Billets.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 10,000 metric tons of certain 130mm square welding quality continuous cast steel billets for May-June of 1991 under Article 8 of the Arrangement Between the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Finland Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 48.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.104(b)) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain 130mm square welding quality continuous cast steel billets. On April 23, 1991, the Secretary received an adequate petition from American Steel & Wire Corporation ("ASW") requesting a short-supply allowance for 10,000 metric tons of this product during May-June 1991 under Article 8 of the U.S.-Finland Arrangement. ASW is requesting short supply for this material because the potential foreign supplier has no available quota to export this product, and domestic producers are either unable to meet the specifications or have no available capacity to produce this material.

The quantity requested by grade, physical specifications, and method of manufacture of the subject billets are as follows:

		Metric tons
Grade/quantity requested:.	70S–3	2,700
	70S–6	6,300
	ER 70S–7	1,000
Total..... ...		10,000

Cross-section: 130mm (± 2mm);
Length: 9.4M–10.3M (no shorts);
Twist: 5 degrees maximum over length of billet;

Straightness: 13mm maximum out-of-straight in any 1.5m, 76mm maximum out-of-straight over billet length;
Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Mushroomed ends must not exceed 6mm per side. No open or split ends. Detachable saw burrs, fins, or shear lips must be minimized;

Surface: Billet must be commercially free of cracks, mechanical defects and other melting/casting type surface discontinuities. Pinhole defects shall not exceed 2mm in depth;

Squareness: Rhomboid sections with uneven diagonals more than 8mm are unacceptable;

Corner Radius: 6mm (± 2mm).
Cast: Must be continuous (direct) cast billets;
Other: Must be B.O.F. steel.
Section 4(b)(4)(B) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist:

(1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than May 23, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than May 8, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after May 8, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Jim Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–2667 or 377–0159.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–10281 Filed 4–30–91; 8:45 am]

BILLING CODE 3510–DS–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Third Renewal

The Commodity Futures Trading Commission has determined to renew for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Financial Products Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, Section 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Financial Products Advisory Committee are to conduct public meetings and submit reports and recommendations on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission.

Commissioner William P. Albrecht serves as Chairman and Designated Federal Official of the Financial Products Advisory Committee. The Committee's membership represents a cross-section of interested and affected persons and groups including representatives of newer institutional market participants, such as broker-dealers, pension sponsors and investment companies; traditional market participants, such as futures commission merchants, commodity pool operators and commodity trading advisors; and representatives of the academic, legal and accounting communities and other appropriate public participants.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 25, 1991, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–10208 Filed 4–30–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive or Partially Exclusive Licensing

AGENCY: Office of the Judge Advocate General, DOD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patent Application SN 07/601,090, filed on 22 October 1990, entitled Encapsulated High Concentration Lipid a Compositions as Immunogenic Agents To Produce Human Antibodies To Prevent or Threat Gram-Negative Bacterial Infections.

FOR FURTHER INFORMATION CONTACT: Mr. Earl T. Reichert, Department of the Army, Office of the Judge Advocate General, Intellectual Property Law Division, 5611 Columbia Pike, ATTN:

JALS–IP, Falls Church, VA 22041–5013, (703) 756–2633.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–10239 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: June 18, 1991.

Time: 0800–1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Review of service vaccination policies, deliberations and recommendations to retain, delete, replace or modify vaccine or immunization policy as appropriate.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258. (703) 756–8012.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10183 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 19 June 1991.

Time: 0800–1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Defense strategy into the 21st century, deliberations and recommendations on future vaccine research and development programs.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–8012.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10184 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 20 June 1991.

Time: 0800–1600.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: Lessons Learned, Update on Lyme Disease, Report on Cholera Epidemic in Peru, Report on the Review of the DOD Immunization Policy, Report on DOD Overseas Infectious Disease Program Review.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–8012.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10185 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Epidemiological Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 21 June 1991.

Time: 0800–1400.

Place: Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: OSBREM Overview, Report on Laboratory Consolidation Progress, Report on Kuwaiti Oil Well Fires Hazard Assessment.

This meeting will be open to the public but limited space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258. (703) 756–8012.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–10186 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of mmeeting: 17 MAY 1991.

Time: 0800–1430.

Place: Society of American Military Engineers Headquarters, 607 Prince Street, Alexandria, Virginia.

Agenda: The Army Science Board Infrastructure and Environment Issue Group study on Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing and Operating Army Facilities will conduct their first meeting to develop the groundwork for the conduct of this study. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–10235 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: 7 June 1991.

Time: 0800–1630.

Place: Harry Diamond Laboratories, 2800 Powder Mill Road, Adelphi, MD.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with the Commander, Directors and staff of the U.S. Army Laboratory Command to discuss their efforts to capture indicators of quality of R&D work and personnel. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the

committee. The ASB Administrative Officer, Sally Warner, may be contacted.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-10236 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Patent Licenses

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S. Patents concerning antenna technology and applications.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, attn: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000. (908) 532-4112.

SUPPLEMENTAL INFORMATION: In accordance with 37 CFR part 404.6, announcement is made of the availability of U.S. Patent Nos. 4,560,141; 4,500,883; 4,498,083; 4,431,999; and 4,275,397 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents involve direct antenna pattern control that provides products and or sums of sin m x/sin x functions by controlling both the amplitudes and spacing of an array antenna or by controlling the phase of the antenna elements. General conceptually different antenna design techniques are employed to simultaneously and independently locate, track and completely cancel (with infinite dBrulls) multiple interference arriving from different spatial directions or to simultaneously cancel interference arriving from all directions except over a small angular sector. Complete cancellation of interfering sources are obtained while either retaining the ability to receive the desired signal at its peak received value or (when phase control is employed) to constrain the signal loss to an acceptable value. Besides having general application in communications systems to reduce or eliminate external interference arriving from spatial directions different than that of the desired signal, one concept is employed in a multiple access application to reduce or eliminate self interference in a dense communications mobile access environment.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by the United States Army Communications-Electronics Command wishes to license the above mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices and systems covered by the above mentioned patents.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10188 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Prospective Exclusive and Partially Exclusive Licenses

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice of prospective exclusive and partially exclusive licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective exclusive and partially exclusive licenses of the following United States Patent Numbers:

4,599,733, 4,568,915, 4,568,914, 4,549,303, 4,542,515, 4,529,963, 4,514,853, 4,512,024, 4,511,885, 4,494,228, 4,475,214, 4,475,214, 4,475,186, 4,472,815, 4,472,814, 4,471,342, 4,470,138, 4,455,662, 4,301,530, 4,293,953, 4,279,207, 4,215,244, 3,917,909, 3,908,088

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000, (908) 532-4112.

SUPPLEMENTARY INFORMATION: The above mentioned United States Patents involve the generation and compression (detection) of spread spectrum multiplexed noise codes and applications of these codes in communications, switching and control systems. Rights to these patents are owned by the United States Government, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army, as represented by the Communications-Electronics Command, intends to grant exclusive or partially exclusive licenses for the above mentioned United States Patents to the following entities: Hiller Technologies, a Limited Partnership, 500 Alexander Park, CN23, Princeton, New Jersey 08543-0023 and Thomas H. Barham Co., Inc., 4239 Highway #33, Tinton Falls, New Jersey 07753.

Pursuant to 35 CFR 404.7(a)(1)(i), any interested party may file written objections to these prospective exclusive or partially exclusive license arrangements. Written objections should be directed to: Mr. William H. Anderson, Intellectual Property Law Division, U.S. Army Communicatiions-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000.

Written objections must be filed within 60 days from the date of the publication of this notice in the **Federal Register.**

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10237 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Exclusive License

AGENCY: U.S. Army Laboratory Command, DoD.

ACTION: Notice of Exclusive License.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of U.S. Patent No. 4,410,902, entitled, "Planar Doped Barrier Semiconductor Device."

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, NJ 07703-5000, (908) 532-4112.

SUPPLEMENTARY INFORMATION: The Planar Doped Barrier Semiconductor Device was invented by Rojer J. Malik (US. Patent Application No. 246,787; U.S. Patent No. 4,410,902; filing date, March 23, 1981; issue date, October 18, 1983). Rights to this United States Patent are owned by the United States Government as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army, as represented by the U.S. Army Laboratory Command, intends to grant an exclusive license for the above mentioned patent to Alpha Industries, Inc., 20 Sylvan Road, P.O.a Box 1044, Woburn, Massachusetts 01801.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to this prospective excusive license arrangement. Written objections should be directed to: Mr. William H. Anderson, Intellectual Property Law Division, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000.

Written objections must be filed within 60 days from the date of the

publication of this notice in the Federal Register.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10238 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Patent Licenses; Availability

AGENCY: U.S. Army Communications—Electronics Command, DoD.

ACTION: Notice of availability.

SUMMARY: This is a notice of availability for non-exclusive, exclusive, or partially exclusive licensing of U.S Patents concerning time dissemination, frequency control, and interference reduction.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications—Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000. (908) 532-4112.

SUPPLEMENTARY INFORMATION: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Nos. 4,457,007; 4,361,886; and 3,783,389 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

—Patent No. 4,361,886 is related to time dissemination and provides a means whereby a precise time reference can be disseminated to any desired location completely free of timing error due to doppler effects. This is accomplished using either a satellite or an airborne relay.

—Patent No. 3,783,389 is related to frequency control and establishes a unique method of generating a median frequency from two frequency sources. This can be used in a repeated fashion to provide a group of frequencies (for a frequency synthesizer) that are all coherently related to a single stable clock reference.

—Patent No. 4,457,007 is related to interference reduction and identifies how multipath returns can be canceled to prevent intersymbol interference. This would increase the capacity of a TDMA mobile subscriber access system.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by the United States Army Communications—Electronics Command wishes to license the above mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices and systems covered by the above mentioned patents.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10187 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate project alternatives and the public interest review factors for the proposed highway widening/relocation in the Northwest River and non-tidal wetlands in the City of Chesapeake, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information contact Alice Allen-Grimes, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510. (804) 441-7219.

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The Virginia Department of Transportation proposes to widen and/or relocate route 168 (Battlefield Boulevard) in Chesapeake, Virginia, which will involve the filling of an estimated 57 to 254 acres of non-tidal palustrine forested wetlands in the drainage areas of the Albermarle Chesapeake Canal and the Northwest River, tributaries of the North Landing River. The portion of the roadway under consideration for improvement extends from the south end of Great Bridge Bypass to the North Carolina State Line, a distance of approximately 10 miles. This portion of route 168 is a major north/south primary arterial in the city of Chesapeake and links the Hampton Roads region of Virginia with the coastal areas of North Carolina. It is currently a two-lane road crossing a primarily agricultural area with significant areas of residential and commercial development.

2. Alternatives. Alternatives which will be investigated include, but will not be limited to, the No Build alternative. Transportation Systems Management, widening the existing roadway, and five other build alternatives that involve combinations of widening of the existing roadway plus construction on new alignment.

3. Scoping Process. A pre-application scoping meeting was held with state and Federal agencies in September 1990 and formal agency scoping comments were requested. Significant issues which have been identified thus far include wetland destruction, potential impacts to a federally listed threatened species (the Dismal Swamp Southeastern Shrew), and residential and commercial displacements. A public notice requesting written public comments will be published upon submission of an Environmental report by the Virginia Department of Transportation.

4. Public Scoping Meeting. If it is determined that a public scoping meeting is necessary to assist the Corps in identifying significant issues which should be addressed in the DEIS, the date and location of the meeting will be announced by separate public notice when schedule.

5. DEIS Availability. It is estimated that the DEIS will be available to the public for review and comment in the fall of 1991.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-10262 Filed 4-30-91; 8:45 am]

BILLING CODE 3710-EN-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Coal Ground Storage Facility Proposed by Norfolk & Western Railway in Windsor, Isle of Wight County, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for a proposed coal ground storage facility.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS may be directed to: Kenneth M. Kimidy U.S. Army Engineer District (USAED), Norfolk, 803 Front Street Norfolk, Virginia 23510-1096, (804) 441-7832.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Norfolk and Western Railway proposes to construct a coal ground storage facility in Windsor, Isle of Wight County, Virginia for the purpose of providing more efficient transportation of coal by

reducing the turnaround time for coal between the mining areas and its export from the Lamberts Point Terminal in Norfolk, Virginia. The capacity for storage at the proposed facility would be 40 million gross tons (mgt) annually. This activity will require a Corps of Engineers permit pursuant to section 404 of the Clean Water Act (Pub. L. 95–217).

2. *Alternatives:* Alternatives which will be investigated will include, but will not be limited to sites adjacent to the main corridor of the Norfolk and Western Railway line within a 12 hour loop of the Lamberts Point Terminal. Alternative construction and access methods which would avoid or minimize wetland impacts will be investigated.

3. *Scoping Process:* Several pre-scoping meetings have been held with Federal, state, and local agency representatives. Some of the alternatives developed during this process included a facility located off of the main line, alternative sites along the main line, and no action. The public scoping process may add to or subtract from this list.

4. *Public Scoping Meeting:* Because of the numerous pre-scoping meetings held with the Federal, State, and local representatives, no additional scoping meetings are anticipated at this time. Since there has been no opportunity for public input to this point, a public notice and the pertinent maps will be sent to the adjacent property owners, newspapers having circulation in the area, and individuals and organizations having previously asked to receive copies of Corps public notices. Written comments on the scope of the DEIS will be accepted from any interested agency, organization, or individual through July 19, 1991.

5. *DEIS Availability:* It is estimated that the DEIS will be available to the public for review and comment in the fall of 1991.

Dated: April 19, 1991.

R. F. Sliwoski,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91–10265 Filed 4–30–91; 8:45 am]

BILLING CODE 3710–EN–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91–3]

DOE's Comprehensive Readiness Review Prior to Initiation of the Test Phase at the Was'e Isolation Pilot Plant (WIPP)

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the need for a comprehensive readiness review by the United States Department of Energy (DOE) prior to initiation of the test phase at the Waste Isolation Pilot Plant (WIPP). The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before May 31, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: April 26, 1991.

John T. Conway,

Chairman.

The Board and its staff have received several status briefings and have conducted several site visits to the Waste Isolation Pilot Plant (WIPP). These reviews were directed at ensuring adequate protection of public health and safety during conduct of the test phase at the WIPP facility.

During the recent briefing on the WIPP Project, Department of Energy (DOE) personnel described twelve separate reviews, appraisals, and assessments by various DOE offices, contractor, and State oversight organizations that have been conducted at WIPP since October 1988. Since DOE's review of the readiness at WIPP was spread over approximately a three year period, the Board is concerned that DOE does not intend to perform a final comprehensive readiness review, after completion of the contractor's readiness review, prior to the initiation of the test phase.

Therefore, the Board recommends:

1. That an independent and comprehensive DOE readiness review be carried out at WIPP prior to initiation of the test phase. As indicated in item 2, members of the review team may include some personnel from the line organization;

2. That the team constituted to carry out the readiness review consist of experienced individuals whose backgrounds collectively include all important facets of the unique operations involved and that the majority of the team members be independent of WIPP programmatic or line management responsibilities to ensure an independent and unbiased assessment;

3. That the DOE readiness review team confer with the DOE teams that are currently performing readiness reviews at other DOE facilities to determine what procedures for conducting readiness reviews have or have not been effective, recognizing that a tailored approach is required for WIPP; and

4. That the review include, but not be limited to, the following items:

a. Assessment of the adequacy and correctness of waste handling and utility systems normal and abnormal operating, and emergency procedures;

b. Assessment of level of knowledge achieved during operator qualification as evidenced by review of examination questions and examination results, and by selective oral examinations of operations by members of the review team;

c. Assessment of conduct of operations of observation of actual waste handling operations using simulated waste containers, and the response to simulated abnormal and emergency situations;

d. Assessment of the interrelationships and the delineation of roles and responsibilities among the various DOE (Carlsbad and Albuquerque) and contractor (Westinghouse and Sandia National Laboratory) organizations involved in the test phase;

e. Examination of records of tests and calibration of safety systems and other instruments monitoring Limiting Conditions of Operations or that satisfy Operating Safety Requirements; and

f. Verification of safety system as-built drawings by walkdown of selective systems.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

April 26, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, D.C. 20585.

Dear Mr. Secretary: On April 25, 1991, the Defense Nuclear Facilities Safety Board, in accordance with Section 312(5) of Public Law 100–456, approved Recommendation 91–3 which is enclosed for your consideration.

Section 315(A) of Public Law 100–456 requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. Please arrange to have this recommendation placed on file in your regional public reading rooms as soon as possible.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,

Chairman.

Enclosure

[FR Doc. 91-10274 Filed 4-30-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.040]

Invitation for Fiscal Year 1991 Applications Under the School Construction in Areas Affected by Federal Activities Program for Fiscal Year 1992 Funds

Purpose of Program: To help compensate school districts for the cost of educating children when enrollment and the availability of revenues from local sources have been adversely affected by Federal activities, the Secretary provides direct grants for the construction, or remodeling of urgently needed minimum school facilities. Section 5 of Public Law 81-815 authorizes assistance for school construction in local educational agencies experiencing an increase in membership due to Federal activity carried on either directly or through a contractor. Eligibility is determined by the increase in the number of children residing on Federal property or with a parent employed on Federal property. Section 9 authorizes construction assistance to school districts experiencing a temporary Federal impact, either directly or through a contractor. Section 14 authorizes assistance for certain school districts that serve children residing on Indian lands, or that are significantly burdened by the presence of nontaxable Federal property and have a substantial number of inadequately housed pupils. Section 8 authorizes assistance that supplements certain awards made under sections 5, 9, and 14 of Public Law 81-815.

Notice is given that the Secretary of Education has established a closing date for the transmittal of applications for assistance under sections 5 and 9 of Public Law 81-815, based on increase periods ending June 1991 or June 1992. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This closing date also applies to applications for assistance under section 14 and for supplemental assistance under section 8 of Public Law 81-815.

Approval of these applications is subject to availability of funds.

Deadline for Transmittal of Applications: July 2, 1991.

Deadline for Intergovernmental Review: September 3, 1991.

Available Funds: For fiscal year 1992, the Administration has requested $5,000,000 for sections 5 and 14(c), and $5,000,000 for sections 14(a) and 14(b). However, the actual level of funding is contingent upon final Congress action. The fiscal year 1991 appropriation was $9,759,000 for sections 14(a) and 14(b) and $6,831,000 for sections 5 and 14(c).

Applications available: Application forms may be obtained from the State educational agency that serves the applicant local educational agency.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 82, 85 and 86; and (b) the regulations for this program in 34 CFR part 221.

For Information Contact: School Facilities Branch, Impact Aid Program, Program Operations Division, U.S. Department of Education, 400 Maryland Avenue, SW., room 2117, Washington, DC 20202-6244. Telephone: (202) 401-0660. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 631-645.

(Catalog of Federal Domestic Assistance No. 84.040 School Assistance in Federally Affected Areas—Construction)

Dated: April 25, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-10334 Filed 4-30-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee, Open Meeting

Under the Federal Advisory Committee Act (Public Law 92-463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: Renewable Energy and Energy Efficiency Joint Ventures Advisory Committee (REEEJVAC).

Date and Time: May 21, 1991, 9 a.m.-5 p.m.; May 22, 1991, 9 a.m.-12 p.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Rosslyn, VA.

Contact: Elaine S. Guthrie, Office of Technical Assistance (CE-54), Conservation and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone: 202/586-1719.

Purpose of Committee: To advise the Secretary of Energy on the development of the solicitation and evaluation criteria for joint ventures, and on otherwise carrying out his responsibilities under the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Pub. L. 101-218, 42 U.S.C. 12005).

Tentative Agenda: Briefings and discussions of:

- Introduction of Committee Members and Appointment of Committee Chair;
- Board's statutory responsibilities;
- Committee Procedures;
- Background Information on Public Law 101-218, Joint Ventures, Procurement, and Specific Technologies;
- Establishment of a Working Executive Committee;
- Criteria for Selection of Joint Venture Projects;
- Other Matters Requiring Board Consideration and Public Comment Period (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Elaine Guthrie at the address or telephone number listed above. Requests to make oral presentations must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 26, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91-10286 Filed 4-30-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-83-NG]

Chippewa Gas Corp.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Chippewa Gas Corporation to import up to 150 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 24, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–10284 Filed 4–30–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES91–26–000, et al.]

UtiliCorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 23, 1991.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES91–26–000]

Take notice that on April 16, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to 204 of the Federal Power Act seeking authority to enter into a Reimbursement Agreement and a Pledge Agreement to secure a long/term letter of credit and an exemption from the Commission's competitive bidding requirements.

Comment date: May 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power Company

[Docket No. ER91–377–000]

Take notice that on April 15, 1991, Pennsylvania Power Company (Pennsylvania) tendered for filing revised, decreased, rates for electric service to five municipal resale customers, along with a petition for permission to charge its five municipal resale customers the decreased electric rates pending Commission action on the revised rates under section 205 of the Federal Power Act. The rate filing has been docketed as ER91–377–000.

Comment date: May 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ES91–27–000]

Take notice that on April 16, 1991, UtiliCorp United Inc. (Applicant) filed an application pursuant to 204 of the Federal Power Act seeking authority to issue notes pursuant to a $400 million Credit Agreement and an exemption from the Commission's competitive bidding requirements.

Comment date: May 15, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–10219 Filed 4–30–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–1827–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

April 23, 1991.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP91–1827–000]

Take notice that on April 15, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91–1827–000, a request, pursuant to 18 CFR 157.205, 157.211 and 284.223(b) for authorizations to provide interruptible transportation service under its blanket transportation certificate for the account of Vanalco Inc. (Vanalco) and to construct and operate delivery facilities to provide direct deliveries to Vanalco, consisting of approximately 1.65 miles of pipeline to partially loop its existing Vancouver Lateral, and a new delivery meter at the terminus of the Vancouver Lateral in Clark County, Washington, hereinafter referred to collectively as the "Vanalco Facilities"; all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that Vanalco presently purchases natural gas from Development Associates, Inc. (DA), a shipper having firm transportation capacity on the Northwest system and arranges for Northwest Natural Gas Company (Northwest Natural), a local distribution company, to provide transportation service to its plant. Northwest explains that it transports and delivers gas under a firm transportation agreement with DA to Northwest Natural at its Vancouver Meter Station in Clark County, Washington. Northwest Natural then transports the gas 3,000 feet on its distribution pipeline to Vanalco's plant.

Northwest further states that Vanalco has requested a direct delivery connection from Northwest. To accommodate that request, Northwest proposes to construct and operate the Vanalco Meter, consisting of a 3-inch turbine meter and appurtenances, on the site of Northwest's existing Vancouver Meter Station in Clark County, Washington which will be used to deliver up to 2,500 MMBtu per day and 912,500 MMBtu annually to a new pipeline to be constructed by Vanalco as part of its plant facilities. To accommodate Vanalco's volumes in addition to existing delivery commitments to Northwest Natural on the Vancouver Lateral, Northwest also proposes to upgrade its Vancouver Lateral by constructing and operating 1.65 miles of 6-inch pipeline that would loop portions of the existing Vancouver Lateral in Clark County, Washington.

It is said that Vanalco has agreed to reimburse Northwest for all actual costs incurred by Northwest in constructing the proposed Vanalco Facilities, plus the grossed up income tax liability which Northwest will incur. Northwest estimates that the meter and looping will cost about $391,694, with an additional income tax liability of $114,111, for a total cost estimate of $505,805.

Northwest states that, pursuant to an agreement dated December 10, 1990, under its Rate Schedule TI–1, it proposes to transport up to 2,500 MMBtu per day of natural gas for Vanalco. Northwest indicates that the gas would be transported from any mainline receipt point, and would be redelivered to any mainline delivery point, including the proposed new Vanalco Meter. Northwest further indicates that it would transport up to 2,500 MMBtu on

an average day and up to 912,500 MMBtu annually.

Northwest states that, in addition to the proposed interruptible transportation service under the Vanalco Transportation Agreement, once the Vanalco Facilities are authorized and constructed, the flexible delivery point authority (18 CFR 284.221(h)) under Northwest's blanket transportation certificate will be invoked to provide deliveries to Vanalco at the new Vanalco Meter Station under the existing firm transportation agreement with DA.

It is averred that the requested Vanalco Facilities will provide Vanalco an economic alternative to the transportation service currently provided by Northwest Natural to its aluminum processing plant.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Company

Docket Nos. CP91-1880-000, CP91-1881-000, CP91-1882-000, CP91-1883-000]

Take notice that on April 19, 1991, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day,[1] average, annual	Points of [2]		Start up date, rate schedule, service type	Related docket [3] contract date
			Receipt	Delivery		
CP91-1880-000 (4-19-91)	Chevron U.S.A. Inc., Marketing Inc.	20,000 20,000 7,300,000	LA, OLA	LA	3-1-91, ITS, Interruptible.	ST91-7877-000, 12-7-90.
CP91-1881-000 (4-19-91)	Fuel Services, Inc	4,000 4,000 1,460,000	KS, LA, MI, OK, TX, WI, OLA, OTX.	IN	3-1-91, ITS, Interruptible.	ST91-7872-000, 12-7-91.
CP91-1882-000 (4-19-91)	Hunt Oil Company	30,000 30,000 10,950,000	OLA	LA	3-1-91, ITS, Interruptible.	ST91-7875-000, 1-11-91.
CP91-1883-000 (4-19-91)	Exxon Corporation	15,000 15,000 5,475,000	LA, OLA	LA	3-1-91, ITS, Interruptible.	ST91-8009-000, 1-24-91.

[1] Quantities are shown in Dth.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation services was reported in it.

3. Colorado Interstate Gas Company; Panhandle Eastern Pipe Line Company; Northern Natural Gas Company

[Docket Nos. CP91-1886-000; CP91-1887-000; CP91-1888-000; CP91-1889-000; CP91-1890-000; CP91-1891-000]

Take notice that on April 22, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No., (date filed)	Shipper name (type)	Peak day average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1886-000 (4-22-91)	Rangeline Corporation (marketer).	10,000 5,000 1,825,000 [1]	WY, CO, KS, OK	WY	3-1-91, TI-1, Interruptible.	ST91-7851-000, 3-1-91.
CP91-1887-000 (4-22-91)	Shell Gas Trading Company (marketer).	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX.	IN	2-22-91, PT, Interruptible.	ST91-7863-000, 3-1-91.

Docket No., (date filed)	Shipper name (type)	Peak day average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1868-000 (4-22-91)	NGC Transportation Inc. (marketer).	5,000 5,000 1,825,000	CO, IL, KS, MI, OH, OK, TX, WY.	IN	3-1-91, PT, Interruptible.	ST91-7966-000, 3-1-91.
CP91-1889-000 (4-22-91)	Indiana Gas Company (LDC).	51,431 51,431 18,772,315	OK, TX, KS [3]	Various [2]	3-1-91, PT, Firm	ST91-7965-000, 3-1-91.
CP91-1890-000 (4-22-91)	Access Energy Corporation (marketer).	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX.	IN	12-4-91, PT, Interruptible.	ST91-7864-000, 3-1-91.
CP91-1891-000 (4-22-91)	V.H.C. Gas Systems, L.P. (marketer).	250,000 187,500 91,250,000 [4]	Various	Various	3-26-91, IT-1, Interruptible.	ST91-8054-000, 3-26-91.

[1] CIG's quantities are in Mcf.
[2] The delivery points are listed on Exhibit A—Transportation Agreement for firm service under Rate Schedule PT.
[3] Panhandle would also receive gas on an interruptible basis from the interruptible points of receipt as listed in Exhibit A of the Master Receipt Point List.
[4] Northern's quantities are in MMBtu.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944	CP86-589, *et al.*
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188	CP86-435-000
Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642	CP86-585-000.

ANR Pipeline Company

[Docket No. CP91-1878-000, Docket No. CP91-1879-000]

Take notice that on April 19, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[3]

ANR has provided information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, as summarized in the appendix.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.	Shipper name (type)	Peak day, average day, annual Dth	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-1878-000	Kaztex Energy Management, Inc. (marketer).	995 995 363,175	LA, OLA	WI	2-21-90, FTS-1, Firm.	ST91-7873, 3-1-91.
CP91-1879-000	Triumph Gas Marketing Co. (marketer).	2,000 2,000 730,000	LA, OLA	WI	2-28-91, FTS-1, Firm.	ST91-7878, 3-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Equitrans, Inc., El Paso Natural Gas Company, Midwestern Gas Transmission, Viking Gas Transmission Company

[Docket Nos. CP91-1858-000, CP91-1859-000, CP91-1860-000, CP91-1861-000]

Take notice that Applicants filed in the above-referenced docket prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: June 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1858-000 (4-17-91)	Polaris Pipeline Corporation.	50,604 100 12,000	Various	Various	ITS, Interruptible	ST91-8042, 3-29-91.
CP91-1859-000 (4-18-91)	Shell Western E&P, Inc. (producer).	25,750 25,750 9,398,750	Various	Various	T-1, Interruptible	ST91-7841, 3-8-91.
CP91-1860-000 (4-18-91)	North Canadian Marketing (marketer).	150,000 150,000 54,750,000	Various	Various	IT, Interruptible	ST91-8228, 4-1-91
CP91-1861-000 (4-18-91)	Mobil Oil Canada, As Partnership (producer).	100,000 100,000 36,500,000	Various	Various	IT-2, Interruptible	ST91-8229, 3-19-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978	CP88-433-000.
Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275	CP86-553-000.
Midwestern Gas Transmission, P.O. Box 2511, Houston, Texas, 77252	CP90-174-000.
Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252	CP90-273-000.

6. United Gas Pipe Line Company, Southern Natural Gas Company

[Docket No. CP82-383-004]

Take notice that on March 8, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 (collectively referred to as Applicants), filed in Docket No. CP82-383-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order of January 19, 1983, 22 FERC 62,058 authorizing the exchange of natural gas between United and Southern. Applicants state that the amendment requested herein would authorize Applicants to add an additional firm exchange point and authorize pre-granted abandonment of the exchange, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicants state that by order issued January 19, 1983, in Docket No. CP82-383-000, Applicants were authorized to transport and exchange up to 115,000 Mcf of natural gas per day at eight delivery points pursuant to the terms of an exchange agreement dated June 1, 1981. Applicants state that by letter agreement dated December 13, 1990, Applicants agreed to extend the term of the exchange agreement until June 1, 1994. Applicants request pre-granted abandonment authorization of the exchange, effective June 1, 1994. Applicants also propose to add as an additional firm exchange point the Bayou Sale Exchange Point for delivery by United to Southern to enable Southern to receive on a firm basis up to 75,000 Mcf of gas per day at either the St. Martin or the Bayou Sale Exchange Point. Applicants state that Southern will not be obligated to receive at the St. Martin Exchange Point in excess of a total of 7 Bcf of gas in any calendar year, or 2.9 Bcf of gas during the period from January 1, 1994 to May 31, 1994. Applicants state that the addition of the Bayou Sale Exchange Point will not require the construction of any new facilities.

Comment date: May 14, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP91-1862-000]

Take notice that on April 18, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed an application in Docket No. CP91-1862-000 pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to abandon transportation and sales service for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation and sales agreement dated May 24, 1977, as amended, on file with the Commission as Trunkline's Rate Schedule T-20, Trunkline agreed to transport on a firm basis on behalf of Northern up to 25,000 Mcf per day. It is indicated that Trunkline would receive the gas in West Cameron, South Addition Block 616, Offshore Louisiana, and redeliver the gas at three specified points located at Olla, Centerville, and Garden City, Louisiana. It is also indicated that Trunkline had the option to purchase twenty percent of the volumes received from Northern.

Trunkline states that, in accordance with the terms of the agreement, Northern gave Trunkline written notice of Northern's election to terminate the agreement under Rate Schedule T-20. By this application Trunkline requests authority to abandon the service covered under its Rate Schedule T-20 effective on December 14, 1989. No abandonment of facilities is proposed.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of the notice.

8. Williams Natural Gas Company

[Docket No. CP91-1807-000]

Take notice that on April 12, 1991, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-1807-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the Boyer Storage Field located in Butler County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams proposes to abandon the Boyer Storage Field which was originally certificated in Docket No. G-298. Williams states that the facilities it proposes to abandon would consist of 14 injection/withdrawal wells, three observation wells, and approximately

7.2 miles of one-inch, two-inch, three-inch, four-inch and eight-inch pipeline and appurtenant facilities. Williams states that the Boyer Storage Field has been shut-in since October of 1982 except for deliveries of minor volumes of domestic gas.

It is indicated that the 14 wells would be plugged and abandoned and that all above ground facilities (approximately 1.5 miles of surface piping and 440 feet of four-inch pipeline) would be reclaimed. It is further stated that the remainder of the pipe would be abandoned in place. Williams estimates that the cost to abandon the facilities would be $104,440 with an estimated salvage value of $19,736.

Williams indicates that there are four domestic customers currently receiving free gas pursuant to gas storage leases and that these customers have been notified of the proposed abandonment and offered conversion to propane or have excused Williams from any further obligation upon abandonment of the field.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP91-1809-000]

Take notice that on April 12, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP91-1809-000 an application pursuant to section 7(c) of the Natural Gas Act for authority to partially abandon its natural gas sales service to the Town of Livingston, Alabama (Livingston), effective October 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the service agreement reflecting the currently authorized service level for Livingston expired on September 30, 1990. Southern further states that it executed a new service agreement with Livingston on March 1, 1991, that reduces its Maximum Daily Obligation to Livingston from 4,445 to 2,000 Mcf per day. Southern advises that the new service agreement would be for a one year term, beginning October 1, 1990 and ending October 1, 1991. Prompted by the execution of the new service agreement, Southern requests authority to abandon 2,445 Mcf per day of its firm sales service to Livingston, effective October 1, 1990. The abandonment is not expected to adversely impact Livingston's ability to service its existing customers. No facilities are proposed to be abandoned herein.

Comment date: May 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP91-1847-000]

Take notice that on April 16, 1991, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1847-000 a request pursuant to § 157.205 of the commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate and maintain the Withrow, Minnesota town border station (TBS) #1a as a sales facility and to increase delivery capacity of the Faribault, Minnesota TBS #4 both to accommodate natural gas deliveries to Northern States Power (NSP), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the volumes proposed to be delivered to NSP at the Withrow, Minnesota TBS #1a and the Faribault, Minnesota TBS #4 would be within the currently authorized level of firm entitlements for NSP as set forth in Northern's currently effective CD-1, SS-1, and PS-1 Service Agreements.

It is further said that the proposed volumes for Withrow TBS #1a would be served from the total firm entitlements currently assigned to the community of Stillwater, Minnesota and the proposed volumes for Faribault TBS #4 would be served from the total firm entitlements currently assigned to the community of Faribault, Minnesota. It is stated that Withrow TBS #1a and Faribault TBS #4 would not be assigned any firm entitlements. It is further stated that delivery of such volumes would enable NSP to more fully utilize its existing firm entitlements currently authorized.

11. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP87-190-012]

Take notice that on April 22, 1991, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-190-012 a petition to amend its certificate issued in Docket No. CP87-190-000, as amended, to extend the authorized term to expire on September 30, 1999, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1987, in Docket No. CP87-190-000, 39 FERC ¶ 61,380 (1987), Lone Star was granted authorization to provide firm transportation service for Coastal States Gas Transmission Company (Coastal), and to construct and operate certain facilities in interstate commerce necessary to perform the transportation service for a period of one year from the date of the order. Lone Star indicates that by orders issued on June 6, 1988, in Docket No. CP87-190-005, June 5, 1989, in Docket no. CP87-190-007 and June 5, 1990, in Docket No. CP87-190-009, Lone Star's authorization to transport for Coastal was amended to allow continued transportation for a term expiring on the earlier of one year from the date of the respective order or the date Lone Star accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations. Lone Star in its current petition to amend requests authority to extend this authorization to expire the earlier of September 30, 1999, the expiration date of the transportation agreement, or the date the Commission issues authorization for the sale of Lone Star's interstate facilities, as requested in Docket No. CP90-2287-000. Lone Star proposes no other changes.

Comment date: May 14, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-10220 Filed 4-30-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement on the Proposal To Establish an Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Western Area Power Administration (Western) proposes to establish an Energy Planning and Management Program (Program) to replace its Guidelines and Acceptance Criteria (CAC) for the Conservation and Renewable Energy (C&RE) Program. Western's C&RE Program was reviewed during the past year. This review indicated that Western should consider a more comprehensive approach than that represented by the existing C&RE Program G&AC. The goal of the Energy Planning and Management Program is to link Western's power resource allocations with long-term energy planning and efficient electric energy use by Western's customers. Western is preparing an informational brochure fully describing the Energy Planning and Management Program. Copies of the brochure may be obtained by contacting any of the individuals identified later in this notice.

The proposed Energy Planning and Management Program may involve potentially significant environmental and economic issues and impacts that may be of interest to the public. Therefore, Western intends to prepare a programmatic EIS on the proposed Program within the framework of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347, and pursuant to the Council on Environmental Quality regulations for implementing NEPA, 40 CFR parts 1500-1508. Western wants to receive comments on the Program and EIS process. The contents of the Program are contained in a separate **Federal Register**, notice [published at 56 FR 16093, April 19, 1991]. The scope of the EIS may be limited or modified depending on the outcome of the public process.

SCHEDULE AND NEPA COMPLIANCE: The EIS will be prepared according to NEPA requirements, Council on Environmental Quality regulatons and DOE NEPA Regulations, 10 CFR part 1021. Full public disclosure and participation are encouraged and planned for throughout the EIS process.

The EIS process will take about 24 months. It includes public information meetings, scoping meetings, coordination and involvement with appropriate Federal and State government agencies, public review and public hearings on the published draft EIS, a published final EIS, a review period, publication of a record of decision (ROD), and a final rule to document Western's decision whether or not to proceed with a Energy Planning and Management Program. Public information and scoping meetings will begin in June 1991, following the schedule identified below. Public comment forums and hearings will be scheduled before issuing a final **Federal Register** notice. Publication of the ROD and final rule are anticipated in 1993.

PUBLIC MEETINGS: Western will conduct public information/scoping meetings to: (1) Inform the public and Federal, State, and local agencies of the proposed action; (2) receive information and comments to help identify environmental issues to be addressed in the EIS; and (3) gather information and comments about the proposed Program. Locations, dates, and times of these initial meetings are:

Locations	Facility	Date
Phoenix Area:		
Phoenix, AZ	Embassy Suites, 1515 N. 44th St., Phoenix, AZ	June 13, 1991.
Salt Lake City Area:		
Salt Lake City, UT	Red Lion Hotel, 255 South West Temple, Salt Lake City, UT	June 17, 1991.
Loveland Area:		
Northglenn, CO	Holiday Inn Holidome, 10 E. 120th Ave., Northglenn, CO	June 19, 1991.
Sacramento Area:		
Sacramento, CA	Holiday Inn Holidome, 5321 Date Ave., Sacramento, CA	June 24, 1991.
Billings Area:		
Lincoln, NE	Hilton Hotel, 141 North 9th St., Lincoln, NE	June 25, 1991.
Sioux Falls, SD	Townhouse, 400 South Main, Sioux Falls, SD	June 26, 1991.
Fargo, ND	Holiday Inn, I-29 & 13th Ave., South, Fargo, ND	June 27, 1991.

Public information/scoping meetings are proposed to begin at 1 p.m., and end by 9 p.m., with a dinner break. Depending on participation, Western may extend or shorten these times. Written comments will be accepted through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Western will keep a mailing list of interested parties and persons who wish to be kept informed of the progress of

the EIS. If you are interested in receiving future informaton, or wish to submit written comments, please call or write:

Warren L. Jamison, Assistant to the Administrator for Conservation, Environment, and Safety, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–3398 (303) 231–7945.

James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800 (406) 657–6532.

Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AX 85005–6457 (602) 352–2525.

Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003 (303) 490–7201.

David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097 (916) 649–4418.

Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606 (801) 524–5493.

Issued at Golden, Colorado, April 19, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–10154 Filed 4–30–91; 8:45 am]

BILLING CODE 6450–01–M

Environmental Impact Statement (EIS) Salt Lake City Area Integrated Projects (SLCA/IP) Post-1989 General Power Marketing and Allocation Criteria; Change of EIS Name, Availability of Statement of Scope, Public Information Meetings

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of name change, availability of Statement of Scope, and public information meetings.

SUMMARY: The Western Area Power Administration (Western) announced its intent to prepare an EIS on its Post-1989 General Power Marketing and Allocation Criteria in the **Federal Register** on April 4, 1990 (55 FR 12550). The public comment period began April 4. In a subsequent **Federal Register** notice published September 20, 1990 (55 FR 38747), Western announced that the comment period would end November 16, 1990. That notice also announced five scoping meetings, which were held in October. By **Federal Register** dated November 9, 1990 (55 FR 47125), Western held two additional scoping meetings and extended that scoping period until December 31, 1990.

In response to the comments received during the scoping period, Western has decided to clarify the scope for its EIS. Western has also decided to change the name of its EIS to reflect more correctly this clarified scope. Henceforth, the SLCA/IP Post-1989 General Power Marketing and Allocation Criteria EIS will be titled the SLCA/IP Electric Power Marketing EIS.

Western will issue the Statement of Scope detailing the clarified scope for the EIS to be mailed to all interested parties on its EIS mailing list. Also, copies of the Statement of Scope may be obtained from Mr. David Sabo at the addresss given below. Additionally, Western will hold three public information meetings to discuss the results of the scoping process, to provide a status of the overall EIS process, and to explain and answer questions on the Statement of Scope.

DATES: Public information meetings will be held at the following dates and locations. All meetings begin at 7 p.m..

May 6, 1991, Flagstaff High School, 400 West Elm, Flagstaff, Arizona.

May 7, 1991, YWCA Leadership Development Center, 9440 North 25th Avenue, Phoenix, Arizona.

May 9, 1991, Skyline High School Chorus Room, 3251 East 3760 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. David Sabo, EIS Coordinator, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606 (801) 524–5493.

Issued at Golden, Colorado, April 19, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–10155 Filed 4–30–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3952–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. the ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitte or before May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Fuel and Fuel Additives Registration Program (EPA ICR # 0309.04; OMB # 2060–0150). This ICR requests renewal of the existing clearance.

Abstract: Fuel manufacturers are required to register their products and provide quarterly and annual reports on production volume and additive usage. Additive manufacturers must register their products and provide annual reports on production volume. This program provides EPA with an inventory of automotive fuels, fuel composition and fuel additives. The information is used to protect the public from exposure to evaporative emissions and products of combustion, and to prevent damage to automotive emission controls systems.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Manufacturers of fuels and fuel additives.

Estimated Number of Respondents: 2000.

Estimated Total Annual Burden on Respondents: 14,560 hours.

Frequency of Collection: One time registration, quarterly and annual reports.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

OMB Response to Agency PRA Clearance Requests

EPA ICR # 1578.01; 1991 Waste Treatment Industry Questionnaire and 1991 Detailed Monitoring Questionnaire; was approved 04/08/91; OMB # 2040–0151; expires 04/30/93.

EPA ICR # 0857.04; Polychlorinated Biphenyls (PCB's): Manufacturing, Processing and Distribution in Commerce Exemptions; was approved 04/08/91; OMB # 2070–0021; expires 04/30/94.

Dated: April 24, 1991.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 91–10267 Filed 4–30–91; 8:45 am]

BILLING CODE 6560–50–M

[PF–545; FRL–3884–6]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Attention: [Product Manager (PM) named in the petition], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM 15).	Rm. 204, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Phil Hutton (PM 17).	Rm. 207, CM #2, 703-557-2690.	Do.
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Rober Taylor (PM 25).	Rm. 245, CM #2, 703-557-1800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) and/or food/feed additive petitions (FAP) as follows, proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 1F3955.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.384 by establishing a regulation to permit residues of mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on grapes at 1.0 part per million (ppm). The analytical method used is gas chromatography with nitrogen-specific detector. (PM 25)

2. *PP 1F3963.* Mycogen Corp., 5451 Oberlin Drive, San Diego, CA 92121. proposes to amend 40 CFR part 180 by establishing a regulation to exempt encapsulated delta endotoxin of *Bacillus thuringiensis* variety *kurstaki* on all raw agricultural commodities. (PM 17)

3. *PP 1F3967.* E.I. du Pont de Nemours & Co., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, proposes to amend 40 CFR 180.396 by establishing a regulation to permit residues of the herbicide hexazinone (3-cyclohexyl-6-dimethylamino-1-methyl-1,3,5-triazine-2-4 (1H,3H)-dione) in or on pasture and rangeland hay at 30.0 ppm. The analytical method used is nitrogen-selective gas chromatography. (PM 23)

4. *PP 1F3968.* Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of microbial fungicide *Bacillus subtilus* in or on seed treatment on growing agricultural crops. (PM 21)

5. *PP 1H5609.* Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville NJ 08876-1258, proposes to amend 40 CFR 185.5200 by establishing a food additive regulation to permit combined residues of the insecticide deltamethrin [(1R,3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester) and its major metabolite, trans-deltamethrin, in or on dried spent hops at 5.0 ppm. The analytical method used is gas-liquid chromatography. (PM 15)

6. *PP 1H5610.* BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR part 185 by establishing a regulation for a food additive tolerance and amend 40 CFR part 186 by establishing a regulation for feed additive tolerances to permit residues of mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on raisins at 5.0 ppm, raisin waste at 25.0 ppm, and grape pomace (wet and dry) at 3.0 ppm. The analytical method used is gas chromatography with nitrogen-specific detector. (PM 25)

Authority: 7 U.S.C. 136a.

Dated: April 10, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–9970; Filed 4–30–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50724; FRL–3888–2]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Agricultural Research Service, U.S. Department of Agriculture, a notification of intent to conduct small-scale field testing in Maryland of a UV-induced mutant strain of *Verticillium lecanii.*

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated February 11, 1991, has been received from the Agricultural Research Service, U.S. Department of Agriculture. The purpose of the proposed testing is to evaluate the efficacy of a UV-induced mutant strain of *Verticillium lecanii* for the control of soybean cyst nematodes on soybean plants. The proposed field tests would be conducted in the State of Maryland in cooperation with Crop Genetics International, on a total area of less than 10 acres. The proposed testing of this organism is a continuation of testing which was previously approved under EPA's notification procedures; receipt announced in the **Federal Register** of April 3, 1990 (55 FR 12418).

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9969 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50725; FRL-3888-3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from E.R. Butts International, Inc., representing Kemira Oy of Finland, a notification of intent to conduct small-scale field testing in California, Colorado, Florida, Iowa, Illinois, Maryland, New Jersey, New York, Oregon, and Texas of a strain of *Streptomyces griseoviridis* isolated from peat in Finland.

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from E.R. Butts International, Inc., on behalf of Kemira Oy of Helsinki, Finland. The purpose of the proposed testing is to evaluate the efficacy of a nonindigenous strain of *Streptomyces griseoviridis* for the control of *Fusarium*-incited diseases of a variety of crops and on trees and peat. The proposed field tests would be conducted in the following States on the crops indicated: California (celery, carnation, and cyclamen), Colorado (carnations and chrysanthemums), Florida (tomato, pepper, watermelon, cantaloupe, cabbage, broccoli, carrots, parsley, petunia, pansy, chrysanthemums, and azaleas), Iowa (field corn, sweet corn, tomatoes, beans, and peppers), Illinous (peat), Maryland (watermelon or canteloupe), New Jersey (watermelon and cantaloupe), New York (cyclamen), Oregon (Douglas fir), and Texas (field corn, sweet corn, tomatoes, beans, and peppers). The total area of the test sites is less than 10 acres. Small-scale field testing of this organism was previously approved by EPA for use in the State of Virginia; receipt announced in the **Federal Register** of March 12, 1990 (55 FR 9214).

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9966 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50723; FRL-3888-1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Modified Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Sandoz Crop Protection Corp. a notification of intent to conduct small-scale field testing of *Sclerotinia sclerotiorum* on turf grasses in the States of Florida, Ohio, Maryland, and Mississippi.

DATES: Comments must be received on or before May 15, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM-21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated March 7, 1991, has been received from Sandoz Crop Protection Corp. of Des Plaines, IL. The purpose of the proposed testing is to evaluate the efficacy of three isolates of *Sclerotinia sclerotiorum* as a mycoherbicide on turf grass for the control of common broadleaf weeds. One of the isolates is an unaltered wild type; the other two are chemical and UV-induced deletion mutants. The use of *Sclerotinia sclerotiorum* on turf was the subject of previous notifications submitted to EPA by Montana State University and announced in the **Federal Register** of June 21, 1989 (54 FR 26084) and by Sandoz Crop Protection Corp. and announced in the **Federal Register** of August 29, 1990 (55 FR 35354). In reponse to those notifications, small-scale testing of the fungus in Montana in 1989 and in Ohio, Pennsylvania, Maryland, and Delaware in 1990 was approved by EPA without the requirement for an experimental use permit. The currently proposed field tests would be conducted in the States of Florida, Ohio, Maryland, and Mississippi. The total area of the proposed test sites would be less than 10 acres.

Dated: April 16, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-9965 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-211029; FRL-3879-6]

2,3,7,8-Tetrachlorodibenzo-p-dioxin; Response to Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of response to citizen's petition.

SUMMARY: This Notice announces EPA's denial of a citizen's petition filed on November 30, 1990, by Greenpeace USA relating to the chemical pollutant 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD or TCDD). The petition was submitted under sections 8 and 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607 and 2620), section 555(e) of the Administrative Procedure Act (APA) (5 U.S.C. 555(e)), section 2(c) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c)), and the Agency's regulations for implementing the cited statutes.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Petition

Greenpeace USA specifically requests that the Agency: (1) Investigate whether any of certain epidemiology studies, claimed by the petitioner as fraudulent or invalid, have been submitted to the Agency in support of permits, licenses, or registrations, or pursuant to TSCA section 8, and if any such submissions have been made, to revisit the relevant decisions and to refer such matters to the U.S. Justice Department for criminal investigation; (2) immediately promulgate a rule prohibiting any Agency staff or State permitting authority from relying upon the identified studies; (3) immediately promulgate a rule requiring the Agency to consider the evidence contained within the petition and prior Greenpeace USA comments on the Agency's TCDD risk assessment in any proposal to alter the Agency's current carcinogenic potency factor and risk-specific dose for TCDD; and (4) immediately establish a national dioxin elimination program to address every facility that has been identified as a source of TCDD releases to any media, waste or product and to eliminate these sources, or require their modification so as to end their generation of TCDD, by the year 2000. Greenpeace USA does not specify which of the provisions cited in its petition apply to each specific request for relief.

Greenpeace USA claims that certain identified epidemiology studies on TCDD are now known to be fraudulent or at the very least to be invalid and that these studies were key to EPA's determination of the risk of TCDD and to its regulation of TCDD. The petitioner asserts that, because the Agency used these studies in its risk assessment on TCDD, it is underestimating the risk of this chemical. Greenpeace USA also contends that a panel of independent experts has found a significant association between TCDD exposure and a wide range of human health effects and that this finding has been verified by even more recent scientific studies. The petition is premised upon the belief that human health effects of TCDD may be far worse than originally concluded by the Agency because of its use of the alleged fraudulent/invalid studies.

B. Authorities for Citizen's Petitions

1. *TSCA Section 21.* Under section 21(a) of TSCA, any citizen may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4 (chemical testing rules), section 6 (regulatory control rules), or section 8 (information reporting or retention rules) of TSCA. Section 21 also authorizes a petitioner to request the issuance, amendment, or repeal of an order under section 5(e) (new chemical substances and significant new uses) or section 6(b)(2) (quality control) of TSCA. The petitioner must set forth the facts which he/she claims establish that it is necessary for the Agency to issue, amend, or repeal a rule or order under one of the specified sections of TSCA.

Section 21(b)(3) directs that within 90 days after a petition is filed, EPA must decide to either grant or deny the petition. If EPA denies a petition, it must publish its reasons in the **Federal Register**. If EPA grants a petition, it must promptly initiate an appropriate proceeding in accordance with section 4, 5, 6, or 8.

If EPA denies a petition, or fails to make a decision within the 90-day review period, the petitioner has 60 days from the date of the decision or from the end of the review period, whichever is

first, to commence a civil action against EPA. Section 21(b)(4) identifies petitioners' rights and the procedures to be followed under such civil actions.

2. *APA section 555(e).* Section 555(e) of the APA requires federal agencies, in general, to give prompt notice of the denial of any application, petition, or other request by an interested party made in connection with any agency proceeding (defined as a rulemaking, adjudication, or licensing). This section does not establish a separate citizen's petition right. It only directs federal agencies to give prompt notice of a denial of any request made in the context of a specific proceeding.

3. *APA Section 553(e).* Section 553(e) of the APA requires federal agencies to give citizens the right to petition for the issuance, amendment, or repeal of a rule. Under this provision, a citizen may petition EPA for the issuance, amendment, or repeal of a rule under any statute it implements. This section does not contain a deadline for responding as is found in section 21 of TSCA.

II. EPA Decision

A. Petitioning Authority

Greenpeace USA cites as authorization for its petition sections 8 and 21 of TSCA, section 555(e) of the APA, section 2(c) of NEPA, and the Agency's regulations for implementing the cited statutes. However, EPA finds that only the three statutory provisions noted in Unit I.B. of this notice arguably could authorize this petition. EPA finds no applicable citizen's petition rights in section 8 of TSCA, NEPA, or the Agency regulations. Section 8 of TSCA allows the Agency to promulgate information reporting and retention rules. NEPA requires federal agencies to prepare environmental impact statements for certain actions.

Upon examining section 555(e) of the APA, the Agency has determined that this section confers no right to petition that would apply to the requests of Greenpeace USA. Section 555(e) only applies in the context of specific proceedings. There is no indication in the petition that Greenpeace USA is an interested party in any proceeding whatsoever, nor has Greenpeace USA identified a specific proceeding.

B. Basis for Denial under TSCA Section 21

EPA is denying the first three requests of Greenpeace USA which involve the review of the studies found questionable by the petitioner. These requests are not authorized under section 21 of TSCA because none of them pertains to the issuance, amendment, or repeal of a rule or order under TSCA.

Greenpeace USA's fourth request regarding development of a TCDD elimination program is authorized under section 21 of TSCA because EPA has broad authority under TSCA to regulate chemical substances, including TCDD. In substance, Greenpeace USA's petition actually appears to request rules under EPA's other enabling statutes--the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act. Section 21, however, does not authorize petitioners to request issuance, amendment, or repeal of rules or orders under other EPA authorities.

The Agency is denying the petitioner's request for a TCDD elimination program under section 21 of TSCA. The basis for this denial is that EPA is currently engaged in a major reexamination of TCDD toxicity and an extensive effort to manage dioxin risks under several of EPA's statutes, including TSCA. Therefore, EPA deems it premature to consider any significant changes in its current efforts to manage TCDD risk. Dioxin risk management efforts are part of an extensive program under court supervision by virtue of a July 27, 1988, Consent Decree issued in *Environmental Defense Fund (EDF) & National Wildlife Federation (NWF) v. Thomas* (D.D.C., No. 85–0793), litigation resulting from another TSCA section 21 petition which had requested EPA to issue comprehensive rules on dioxin. Additionally, Greenpeace has not provided any information in its petition on sources of TCDD beyond those EPA is already addressing in its current program. For EPA to judge whether any action is necessary on additional sources, more information is needed on the current levels of human exposure and the benefits to be gained or lost as a result of such action.

The potential of TCDD and related compounds to cause cancer in humans remains an issue of considerable scientific controversy. The Agency originally evaluated the toxicity of dioxin in 1985 and published its determinations in a document entitled "Health Assessment Document for Polychlorinated Dibenzo-p-dioxins" (EPA/600/8–84/014f). In this document, EPA presented the scientific evidence for its decision to classify TCDD as a probable human carcinogen and provided an estimated upper-limit potency slope factor. This estimate of TCDD potency is greater than that estimated by any other government agency, foreign or domestic. Since 1985, EPA has based all of its risk-related dioxin decisions on this 1985 upper-limit estimate.

In 1988, EPA published a draft report based upon a reexamination of TCDD toxicity entitled "A Cancer Risk-Specific Dose Estimate for 2,3,7,8,-TCDD." This report was reviewed by the Agency's Science Advisory Board (SAB). The SAB concluded "that at the present time the important new scientific evidence about TCDD does not compel a change in the current assessment of the carcinogenic risk of dioxin to humans," and found "no scientific basis at this time for the proposed change in [the upper limit potency factor] for the causation of cancer by TCDD." The SAB also made several recommendations to the Agency regarding additional efforts for improving its TCDD risk estimate. EPA is in the process of implementing these recommendations.

In addition, three significant events have recently occurred that relate to dioxin toxicity. First, a report will soon be issued that summarizes the findings on dioxin toxicity from an international conference (Banbury Conference) held in October 1990. This conference was established to review the current state of knowledge on dioxin toxicity and its implications for risk assessment. Second, the National Institute of Occupational Safety and Health (NIOSH) has recently published the results of a major epidemiology study of approximately 5,000 workers exposed occupationally to TCDD (Fingerhut, M. A. et al, "Cancer mortality in workers exposed to 2,3,7,8-tetrachlorodibenzop-dioxin." *New Engl. J. Med.* 324(4) (1990): 212–218). This is the largest and most comprehensive epidemiology study to date of a TCDD-exposed population. In addition, a 34–year mortality follow-up study of German workers exposed accidentally to 2,3,7,8-TCDD in 1953 has also been published (Zober, A., et al., "Thirty-four-year mortality follow-up of BASF employees exposed to 2,3,7,8-TCDD after the 1953 accident." *Int. Arch. Occup. Environ. Health.* 62 (1990): 139–157).

EPA intends to incorporate the information gathered from these sources into its ongoing dioxin toxicity reevaluation as well as other information as it becomes available. EPA will also consider all of the materials provided by Greenpeace USA in support of its petition and its previous comments on the Agency's risk assessment documents.

As indicated above, EPA has an extensive dioxin management program under the Consent Decree in *EDF/NWF v. Thomas*. Under this program EPA has issued, plans to issue, or will consider

issuing rules affecting dioxin under almost every one of its enabling statutes--the Clean Air Act (municipal waste combustors), the Clean Water Act (pulp and paper mill effluents), the Resource Conservation and Recovery Act (wood preservatives, pulp and paper mill sludges), and TSCA (pulp and paper mill sludges and chemical products). In addition to the Consent Decree efforts, EPA deals with dioxin contaminants in pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. If Greenpeace USA disagrees with an action EPA is taking in connection with any ongoing individual rulemaking, the appropriate course of action is not to petition under section 21 of TSCA, but rather to participate in the rulemaking process and, if necessary, seek judicial review at the appropriate time.

In developing and implementing EPA's dioxin risk management program, the Agency continues to use the 1985 report as its basis for dioxin risk estimates. Because of the need to evaluate all of the new evidence on TCDD, EPA concludes that it is inappropriate to initiate a major expansion or reevaluation of its current dioxin risk management efforts at this time. EPA will carefully consider any information developed during its risk assessment or risk management activities that indicates the Agency should change its program direction, including changes suggested by Greenpeace USA. The petition, however, presents no new evidence in this regard.

C. Basis for Denial under APA Section 553(e)

Although Greenpeace USA did not petition the Agency under section 553(e) of the APA, this section would appear applicable to the requests in the petition pertaining to the studies in question. This is especially relevant because, as discussed in Unit II.B. of this notice, these requests are not authorized under section 21 of TSCA. In these requests, the petitioner is actually petitioning EPA to institute general policies regarding the identified studies. An APA 553(e) petition may arguably be appropriate for this purpose because these types of policies may be considered rules under section 551 of the APA. Accordingly, EPA is responding to Greenpeace USA's requests regarding the questioned studies as a petition under section 553(e) of the APA. While EPA is not required to respond under this section within a 90-day period as required by section 21 of TSCA, it has chosen to do so in this case.

In its first request, Greenpeace USA has asked that EPA "investigate whether any of the fraudulent/invalid studies have been submitted in support of Agency permits, licenses, or registration, or submitted to the Agency pursuant to 15 U.S.C. 2607, and if so, to revisit the relevant decisions and to refer such matters to the U.S. Justice Department for criminal investigation." EPA has interpreted this as a request for commencement of a criminal enforcement proceeding.

In the context of a citizen's petition under section 553(e) of the APA it is not proper to request an investigation into allegations of criminal conduct, nor is it proper to request that a matter be referred to the Justice Department for investigation or prosecution. As a matter of policy, EPA does investigate allegations of false statements and/or misrepresentation, and if appropriate, will evaluate the full range of enforcement options available to address legitimate charges of misconduct. However, this activity is a matter of enforcement discretion, and is not conducted through any petitioning process under the APA or TSCA.

With regard to Greenpeace USA's second and third requests, EPA in general does not, and has no need to, formally promulgate rules dealing with the type of studies any Agency staff or delegated State authority may consider. Whether, and to what extent, specific information is used by the Agency as a basis for risk assessment is a question of scientific merit. The Agency will not, on request, prohibit the use of any information. EPA will include consideration of all relevant materials on dioxin toxicity provided by Greenpeace USA in the present petition and information submitted during prior risk assessment activities in any revision of the Agency's weight-of-evidence classification, slope factor, or overall cancer policy on dioxin. Greenpeace USA will have the opportunity to present, during applicable public comment periods for any of these activities, any claims it may have on the validity of information used by EPA.

With regard to the petitioner's fourth request, Greenpeace USA may have requested rules under EPA's other enabling statutes for a TCDD elimination program. However, under applicable case law, a petitioner must choose either TSCA section 21 or the APA under which to petition for rule issuance, amendment or repeal. As discussed in Unit II.B of this notice, Greenpeace USA's fourth request is the only one that is applicable under section 21 of TSCA, and as a result, section 553(e) of the APA is not applicable to the request for a TCDD elimination program. The result of this interpretation is that EPA is denying the petitioner's fourth request under the APA because it has interpreted the petitioner's request for a national TCDD elimination program as a request under section 21 of TSCA. To the extent that EPA could have any obligation to respond to this request under section 553(e), the Agency's reasons for denial in its section 21 response also apply.

III. Public Record

EPA has established a public record of its response to this petition (Docket Number OPTS-211029). The public record contains the petition and the basic information considered by EPA in reaching its decision in this matter. All documents, including the index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

IV. Conclusion

For the above reasons, EPA is denying Greenpeace USA's November 30, 1990 petition relating to TCDD under section 21 of TSCA and section 553(e) of the APA. In addition, EPA finds that it was not appropriate for Greenpeace USA to file the petition under section 8 of TSCA, section 555(e) of the APA, NEPA, and the Agency's regulations.

Dated: April 23, 1991.

F. Henry Habicht,

Acting Administrator.

[FR Doc. 91-10266 Filed 4-30-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Low Power Television/Television Translator Window Applicants

Released: April 25, 1991.

On March 12, 1991, the Commission announced the opening of a limited window to permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. This filing window is to commence April 29, 1991 and continue to and including May 3, 1991. See Public Notice, Mimeo No. 12124, 56 FR 11556 (March 19, 1991).

At that time, it was stated, among other things, that window application filings could be made in person only at the following location: Federal

Communications Commission, Low Power Television Window Filing, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th floor, room 153–2713, Pittsburgh, PA 15259–0001, Attn: Wholesale Lockbox Shift Supervisor.

It was also announced that hand-carried or couriered applications could be delivered daily at the above location during normal business hours and until the close of business (5 p.m.) on Friday, May 3, 1991. This office, however, is also used by the Mellon Bank for the receipt of other Mass Media Bureau application filings and is, for that purpose, open for business twenty-four hours a day. To afford all Mass Media Bureau applicants comparable treatment and avoid any unnecessary filing scheduling difficulties, the Commission will accept as timely filed all hand-carried or couriered low power television and television translator applications submitted at the above Mellon Bank location at anytime daily during the window period, up through 11:59 p.m. on Friday, May 3, 1991.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at Telephone No. (202) 632–3894.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–10232 Filed 4–30–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; Extension of Deadline for Use of Certified or Licensed Appraisers in Federally Related Transactions

AGENCY: Federal Financial Institutions Examination Council.

SUBAGENCY: Appraisal Subcommittee.

ACTION: Notice extending effective date.

SUMMARY: Notice is hereby given that the Appraisal Subcommittee ("ASC"), with the approval of the Federal Financial Institutions Examination Council ("FFIEC"), ordered the extension until December 31, 1991, of the effective date for use of certified or licensed appraisers for all appraisals performed in connection with federally related transactions under title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA").[1] This extension is effective in 54 of the ASC's 57 jurisdictions.

DATES: This action is effective on May 1, 1991.

ADDRESSES: Copies of this notice are available upon request to the Appraisal Subcommittee, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel to the Appraisal Subcommittee, at the address given above; telephone (202) 357–0133.

SUPPLEMENTARY INFORMATION: Title XI of FIRREA provides for the adoption and implementation by the various States of standards and procedures for the certification and licensing of appraisers. The ASC is required to monitor these State appraiser certification and licensing programs. Federally regulated depository institutions are to use these appraisers in federally related real estate transactions. However, the ASC is authorized in section 1119(a)(2) (12 U.S.C. 3348(a)(2)) to extend from July 1, 1991, to December 31, 1991, the effective date for using certified or licensed appraisers in connection with federally related transactions. That authority is premised upon "a written finding that a state has made substantial progress in establishing a State certification and licensing system that appears to conform to the provisions of this title."

During the more than eighteen months since enactment of FIRREA, the ASC has closely monitored the development of appraiser qualification standards in the various states and other jurisdictions subject to title XI. This effort has included the careful review of State legislative and regulatory proposals designed to implement title XI's requirements, as well as the providing of comments, suggestions, guidance and direction in this regard, both general and specific, oral and written. The ASC, however, has not received any formal communications from American Samoa and Palau. In addition, the ASC has learned that the Northern Mariana Islands are only in the initial phases of preparing legislation. Therefore, the ASC at this time has no basis to extend the effective date from July 1, 1991, for these three jurisdictions.

On the basis of this extended and ongoing review, the ASC hereby finds that each State, the District of Columbia, Puerto Rico, Guam and the Virgin Islands have made substantial progress toward establishing an appraiser certification and licensing system in conformity with title XI. Statutes have been or are being enacted as required by title XI.[2] The ASC commends each of these jurisdictions and encourages each to implement its system before the end of the extension period. Moreover, the ASC encourages lenders to use appraisers certified or licensed by these systems as soon as possible.

The ASC further finds that such an extension forwards Congress's intention to implement title XI's new regulatory scheme with minimal disruption and confusion at the state and Federal levels. The ASC recognizes that less than two years have passed since title XI was adopted on August 9, 1989, and, while the States and other jurisdictions have made significant progress, they have had relatively little time to create from scratch an appraiser licensing and certification system. Many tasks are involved in that effort, including an analysis and determination of title XI's requirements, proposing and adopting legislation, creating valid testing and qualification standards, establishing agencies to administer the various aspects of the regulatory program, and coordinating these and other tasks with the ASC, other Federal agencies and entities, and various industry groups. By extending title XI's effective date for use of certified and licensed appraisers in federally related transactions until December 31, 1991, the ASC fully anticipates that, on January 1, 1992, all aspects of a nationwide, comprehensive and uniform real estate appraiser regulatorly system will be in place, as contemplated by Congress when it adopted title XI.

For these reasons, the ASC, with the approval of the FFIEC, hereby extends to December 31, 1991, the deadline for use of certified or licensed appraisers in federally related transactions, pursuant to its authority in section 119(a)(2) of FIRREA (12 U.S.C. 3348(a)(2)), in all fifty States and in the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

By order of the ASC, with the approval of the FFIEC.

Dated at Washington, DC, this 25th day of April, 1991.

[1] Public Law No. 101–73, 103 Stat. 183 (1989); 12 U.S.C. 3310, 3331–3351.

[2] The ASC requests that the States and other jurisdictions continue to facilitate the orderly implementation of the title XI regulatory program by promptly forwarding to the ASC staff all pertinent proposed and enacted legislation.

Federal Financial Institutions Examination Council, Appraisal Subcommittee.

Edwin W. Baker,

Executive Director.

[FR Doc. 91-10233 Filed 4-30-91; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Argentina/U.S. Gulf Ports et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010382-018.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasilerio, Reefer Express Lines Pty., Ltd.

Synopsis: The proposed amendment would delete Reefer Express Lines Pty., Ltd. as a party to the Agreement.

Agreement No.: 212-010382-019.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao, C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would delete provisions of the agreement which conflicted with the Commission's rules concerning notice and waiting period prior to the effectiveness of modifications to the agreement.

Agreement No.: 212-010382-020.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would provide criteria for crediting a party's sailing obligations when carrying cargo under space charter, and it would clarify that charter revenue earned from space charter will not be subject to the pool.

Agreement No.: 212-010382-021.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties: American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacao C.F.I.I., Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro.

Synopsis: The proposed amendment would provide additional detail with respect to the procedure (and liability) for chartering space as permitted under the authority of the agreement.

Dated: April 25, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10181 Filed 4-30-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200502

Title: Tampa Port Authority/Tampa Bay, International Terminals, Inc., Terminal Agreement.

Parties:

Tampa Port Authority (Authority), Tampa Bay International Terminals, Inc. (TBIT).

Filing Party: H.E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, FL 33601.

Synopsis: The Agreement, filed April 22, 1991, provides for: TBIT's operation and maintenance of the Authority's P & H 140 ton truck crane and any future equipment purchased by the Authority; the Authority to reimburse TBIT for costs of operation and maintenance of the crane; and, the Authority to pay TBIT 15 percent of net annual proceeds derived from operation of the equipment after maintenance and operation costs are deducted.

By Order of the Federal Maritime Commission.

Dated: April 26, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10273 Filed 4-30-91; 8:45 a.m.]

BILLING CODE 6730-01-M

[Docket No. 91-14]

Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences

Notice of extension of time for filing comments.

Notice is given that a thirty day extension of time for filing comments, requested by the Agriculture Ocean Transportation Coalition, has been granted. Comments now are due June 21, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-10272 Filed 4-30-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Multiple Award Federal Supply Schedule

ACTION: Notice.

The General Services Administration, Office Supplies and Paper Products Commodity Center is reviewing items under the Multiple Award Federal Supply Schedule Program for the purpose of changing the method of supply to competitive award. These items currently include: diskettes, erasable ball point pens, ribbons, liftoff taps, note trays, tape flags (repositionable), writing paper pads

(repositionable), suspended file folders and colored folders. Some sizes, colors, types, styles, etc. within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, colors, types, styles, etc., may continue being supplied from the Schedule. Comments regarding this matter may be directed to Mr. Allan Sigall, Engineering and Commodity Management Division (2FYEM) Room 20–130, 26 Federal Plaza, New York, NY., 10278. Comments should be made within thirty days from the date of this notice and should address the potential impact on small business concerns.

Dated: April 11, 1991.

Harrold E. Murrell,

Director, Office Supplies and Paper Products Commodity Center.

[FR Doc. 91–10240 Filed 4–30–91; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90A–0416]

Calgene, Inc.; Request for Advisory Opinion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgene, Inc., has requested an advisory opinion regarding whether the kanamycin resistance gene, a selectable marker, may be used in the production of genetically engineered tomato, cotton, and rapeseed plants intended for human food and animal feed use.

DATES: Written comments by July 30, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James H. Maryanski, Center for Food Safety and Applied Nutrition (HFF–300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: FDA is announcing that Calgene, Inc., 1920 Fifth St., Davis, CA 95616, has requested an advisory opinion (Docket No. 90A–0416) from the Commissioner of Food and Drugs regarding whether the kanamycin resistance gene, a selectable marker, may be used in the production of genetically engineered tomato, cotton, and rapeseed plants intended for human food and animal feed use. The request contains information that pertains to the safety of the use of the kanamycin resistance gene for human and animal health and for the environment.

The techniques of gene transfer (e.g., recombinant deoxyribonucleic acid (DNA) techniques) permits scientists to introduce specific, well-characterized genes into plants to develop new varieties that exhibit useful traits. In gene transfer experiments, only a small percentage of the recipient plant cells will actually take up the introduced genes and many desirable traits (i.e., those that specify the intended technical effect) are not easy to detect before the plant has fully developed. Scientists, therefore, enhance their ability to detect plant cells that have taken up the desired genes by linking the desired gene to a selectable marker gene, such as the kanamycin resistance gene.

In the cell, the kanamycin resistance gene specifies the information for the production of the enzyme, aminoglycoside 3-phosphotransferase II. The common name for this enzyme is kanamycin (or neomycin) phosphotransferase II. The kanamycin phosphotransferase II enzyme chemically modifies aminoglycoside antibiotics, including kanamycin, neomycin, and geneticin (G418), inactivating the antibiotic and rendering the cells that produce the kanamycin resistance gene product refactory or resistant to the antibiotic. Plant cells that have received the kanamycin resistance gene survive and grow on laboratory medium in the presence of the antibiotic, kanamycin. Plant cells that did not take up the introduced kanamycin resistance gene will be killed by the antibiotic. By linking the kanamycin resistance gene, the selectable marker gene, to another gene that specifies a desired trait, scientists can identify and select the plants that have taken up and will express the desired genes.

The kanamycin resistance gene has been used as a selectable marker in more than 30 crops, including tomato, cotton, and rapeseed, to develop varieties that exhibit improved nutritional and processing properties, resistance to pests and diseases, tolerance to chemical herbicides, and other agrenomic properties. Once the desired plant variety has been selected, the kanamycin resistance gene serve no further useful purpose, although it continues to produce the kanamycin phosphotransferase II enzyme in the plant tissuees. the kanamycin resistance gene is a research tool that is important for developing new crop varieties through the current recombinant DNA techniques of gene transfer. However, the gene persists beyond the research stage, in that low levels of both the kanamycin resistance gene and the kanamycin phosphotransferase II enzyme protein are expected to be present in foods derived from such plants.

The act provides FDA with broad authority to ensure the safety and wholesomeness of food, empowering the agency to initiate legal action against a food that is found to be adulterated or misbranded within the meaning of the act. Consequently, firms frequently consult with the agency concerning potential safety and regulatory issues that may be associated with food products developed through new technology. FDA believes that such consultations are essential in order for the agency to be knowledgeable about current methods of food production and to carry out its responsibility to protect public health.

In discussions with FDA on food products under development, representatives of Calgene, Inc., raised the issue of the use of the kanamycin resistance gene, pointing out that it will be used in most new crops developed through gene transfer and inquired about administrative procedures by which FDA could evaluate information on its use. FDA advised the firm to submit initially the information to be reviewed as a request for advisory opinion. FDA believes that the advisory opinion approach is appropriate in these circumstances because: (1) The kanamycin resistance gene is used by most firms, including Calgene, Inc., to develop improved food crops by new methods of gene transfer and may raise a broad policy issue concerning how the agency should interpret the act with respect to added substances in food, (2) the request does not pertain to the approval of a food or food ingredient, and (3) it permits the agency to utilize an evaluation process that is open to public comment and to make its decision known to the public.

FDA encourages interested parties to submit comments on the request regarding both human and animal food safety and environmental safety, particularly with respect to the following:

1. Any relevant scientific issues that have not been addressed in the submission;

2. Any available substantive information that bears on the relevant scientific issues;

3. The scope of food crops and crop byproducts covered by the petition. Calgene's request identifies tomato, cotton, and rapeseed as the only food crops that are the subject of the request; and

4. The environmental assessment.

Calgene's request has been placed on display at the Dockets Management Branch (address above).

FDA has filed Calgene's request for an advisory opinion. The filing by the agency of an advisory opinion request is a procedural matter and does not necessarily obligate the agency to issue such an opinion, nor does such filing reflect an agency decision on the substantive merits of the request. The agency will publish a notice of availability of its findings in this matter in the **Federal Register**.

The agency is not required to publish a notice of filing of a request for an advisory opinion and, therefore, does not routinely publish such notices. However, FDA believes that publication of this notice is in the public interest because the agency wishes to receive comments from interested members of the public, industry, and other governmental agencies and because this is the first request made to FDA regarding the use of the new methods of gene transfer to produce foods derived from agricultural crops.

Interested persons may, on or before July 30, 1991, review the request for an advisory opinion and/or file comments (four copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). A copy of the request and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-10244 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0139]

Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by Eastman Kodak Co. proposing that the food additive regulations be amended to provide for the safe use of 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt in polyester resins (including alkyd type) intended as components of adhesives in contact with food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4251) has been filed by Eastman Kodak Co., P.O. Box 511, Kingsport, TN 37662, proposing that § 175.105 Adhesives (21 CFR 175.105) be amended to provide for the safe use of 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt in polyester resins (including alkyd type) intended as components of adhesives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-10245 Filed 4-30-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HFCA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Peer Review Organization (PRO) Contracts, Solicitation of Statements of Interest from In-State Organizations; *Form Number:* HCFA-R-118; *Use:* This information is required for potential contractors to demonstrate that they meet the statutory requirements as Peer Review Organizations; *Frequency:* On occasion; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 1.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Health Maintenance Organization (HMO) National Data Reporting Requirements (NDRR); *Form Number:* HCFA-906; *Use:* This information is needed to effectively monitor and evaluate the progress and effectiveness of the HMO/Competitive Medical Plan (CMP) program and to seek corrective action by HMO/CMP, as appropriate. This ensures the protection of Federal investment and enrolled members of HMO/CMPs. Additionally, the NDRR provides statistical data for continued regulation; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for profit,and non-profit institutions; *Estimated Number of Responses:* 1,760; *Average Hours per Response:* 4; *Total Estimated Burden Hours:* 7,040.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Requirement to Disclose Health Maintenance Organization (HMO) Financial Information to Members; *Form Number:* HCFA-R-97; *Use:* This requirement provides that HMOs must disclose specific information to members, potential members, employees and contractors; *Frequency:* On occasion/annually; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 412; *Average Hours per Response:* .5; *Total Estimated Burden Hours:* 206.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Qualification Application; Competitive Medical Plan (CMP) Medicare Contract Application Qualified Health Maintenance Organization (HMO) Medicare Contract Application; *Form Numbers:* HCFA-901-1, 901-3; *Use:* These forms are used as instruments through which entities will apply and furnish information in order to obtain qualification status, Competitive Medical Plan (CMP) eligibility/Medicare contract status, a Medicare contract (risk-based or cost-based) or service area expansions; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 60; *Average*

Hours per Response: 100; *Total Estimated Burden Hours:* 6,000.

5. *Type of Request:* Revision; *Title of Information Collection:* Uniform Hospital Bill (HFCA–1450) and Related Electronic Media Claim Format—Medicaid System Requirements; *Form Number:* HCFA–R–59; *Use:* These hospital billing requirements enable the Medicaid program to develop meaningful data for reducing medical care costs. This form improves compatibility in hospital claim filing for the Medicaid and Medicare programs and simplifies claims for providers; *Frequency:* On occasion; *Respondents:* State/local governments, businesses/other for profit, and non-profit institutions; *Estimated Number of Responses:* 70 million; *Average Hours per Response:* .05; *Total Estimated Burden Hours:* 3,558,834.

6. *Type of Request:* Extension; *Title of Information Collection:* Medicaid Drug Rebate Program; *Form Numbers:* HCFA–367,(a)(b)(c); *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 10,000; *Average Hours per Response:* 3.41; *Total Estimated Burden Hours:* 34,167.

Note: Notice of emergency submission to OMB was published in the **Federal Register** on March 4, 1991 (Volume 56, No. 42). Page 9020 contained an additional "NOTE" in the middle of the second column of text after *"Data Element Name:* Best Price." That "NOTE" was in error and should be removed.

7. *Type of Request:* New; *Title of Information Collection:* Medicaid State Drug Rebate—Administrative and Quarterly Report Data; *Form Numbers:* HCFA–368 and HCFA–R–144; *Use:* These requirements implement provisions of the Omnibus Budget Reconciliation Act of 1990 in that State Medicaid agencies report to drug manufacturers and HCFA on the drug utilization for their States and the amount of rebate to be paid by the manufacturers; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 255; *Average Hours per Response:* 24.2; *Total Estimated Burden Hours:* 6,171. The HCFA has requested emergency review by the Office of Management and Budget. In keeping with the requirements for emergency reviews, we are attaching a copy of the forms and instructions. Comments may be sent to OMB at the address below for 15 days after the date of this notice.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: April 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Supporting Statement for the State Drug Rebate: HCFA–368 (Administrative Data) and HCFA–R–144 (Quarterly Report Data)

A. Background

Section 4401 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101–508), enacted November 5, 1990, requires drug manufacturers to enter into and have in effect a rebate requirement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients. For purposes of this legislation, a drug manufacturer is defined as one who holds legal title to the National Drug Code number for a prescription drug, non-prescription drug or biological product.

Drug manufacturers who have drug rebate agreements with the Federal Government supply information to HCFA within 30 days after the end of each calendar quarter. This information consists of the average manufacturer price of the drugs, and, for some drugs, the best price at which they were sold. The drug rebate amount is calculated by HCFA and distributed to States. States are required to submit quarterly utilization data reports to the drug manufacturers (and a copy of HCFA) in order to receive a rebate on the drugs dispensed to Medicaid recipients. In turn, States must reimburse HCFA via Federal financial participation for that portion of their rebate previously paid to them.

The Medicaid Bureau (MB) is requesting a 3-year approval of the State reporting requirements under the drug rebate program. A one-time submittal by the States is required to report administrative data, i.e., contact individuals involved in the program and a list of drug manufacturers with which the State has a current rebate agreement. In addition, listed below is a line-by-line justification of the quarterly data reporting required (electronic record layout and hard copy format attached).

Data Element Name: State Code—Two character post office abbreviation for State with individual agreement with labeler. Alpha-numeric, 2 digits.

Data Element Name: Period Covered—Calendar quarter and year covered by data submission. Numeric 3 digit field, QYY.

Valid Values for Q: 1=January 1–March 31; 2=April 1–June 30; 3=July 1–September 30; 4=October 1–December 31.

Valid Values for YY: Last two digits of calendar year covered.

Data Element Name: Labeler Code—First segment of National Drug Code that identifies the manufacturer, labeler, or distributor of the drug. Numeric values only, 5 digit field, right justified and 0–filled for 4 digit labeler codes.

Data Element Name: Product Code—Second segment of National Drug Code. Numeric values only, 4 digit field, right justified, 0–filled.

Data Element Name: Package Size Code—Third segment of National Drug Code. Numeric values only, 2 digit field, right justified, 0–filled.

Data Element Name: Product FDA Registration Name (abbreviated)—First 10 characters of product FDA registration name. Alpha-numeric values, 10 digits.

Data Element Name: Rebate Amount Per Unit—The HCFA calculated amount per unit type to be claimed as a rebate by the State. Numeric values, 11 digits: 5 whole numbers and 6 decimals. Calculate to 7 decimals and round to 6.

Data Element Name: Total Units Reimbursed—The total number of unit types of the drug reimbursed by the State during the period covered. Multiply by the per unit rebate amount reported to the State by HCFA to get the total rebate amount for this drug for the quarter. Numeric values, 12 digits: 9 whole numbers and 3 decimals.

Data Element Name: Total Rebate Amount Claimed—The total rebate amount that the State agency claims it is owed by the labeler for the quarter covered. It is calculated by multiplying the total units reimbursed by the rebate amount per unit. Numeric values, 9 digits: 7 whole numbers and 2 decimal places.

Data Element Name: Number of Prescriptions—The number of prescriptions reimbursed for the drug during the quarter. Numeric values, 6 digits, whole numbers only.

Data Element Name: Total Amount Reimbursed by the State—The total amount the State reimbursed to pharmacists for the drug for the quarter

covered. Numeric values, 10 digits: 8 whole numbers and 2 decimals.

Data Element Name: Correction Record Flag—Indicator that this record is a correction. Numeric values, 1 digit.

Valid Values: 0=original record; 1=correction record.

B. Justification

1. Need and Legal Basis

The authority for requiring States to submit the quarterly data report is section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), enacted November 5, 1990.

2. Information Users

HCFA develops the rebate amount per drug unit from information supplied by the drug manufacturers and distributes this data to the States. States then must report quarterly to the drug manufacturers and HCFA the total number of units of each dosage form/strength of their covered outpatient drugs reimbursed during a quarter and the rebate amount to be refunded. This report is due within 60 days after the end of each calendar quarter. The information in the report is based on claims paid by the State Medicaid agency during a calendar quarter and not drugs that were dispensed during a calendar quarter.

3. Improved Information Technology

The States are required to submit their quarterly reports to HCFA via magnetic media. However, States will determine the vehicle by which they submit the same reports to the drug manufacturers. State agencies have not yet committed to a permanent method for quarterly reporting to their respective drug manufacturers. Each agency will determine whether to use electronic media or hard copy. The States have developed a hard copy layout of the required reporting data which contains the same data as that developed for electronic record layout. This layout was agreed upon by the States and HCFA for those instances where electronic media is not used for quarterly reporting to drug manufacturers.

4. Duplication

The MB is the only HCFA component collecting drug rebate data on the Medicaid program. Therefore, there are no existing data which duplicate this data and could be used in place of drug rebate program data.

5. Similar Information

The MB is the only HCFA component collecting data on the drug rebate program in the Medicaid program. Therefore, there are no existing similar data which could be used in place of the data collected on the drug rebate program forms.

6. Small Business

This collection of information does not involve small businesses or other small entities.

7. Less Frequent Collection

OBRA 1990 requires the quarterly reporting by States of the drug identification and rebate data.

8. General Collection Guidelines

This data collection is conducted in a manner consistent with 5 CFR 1320.6.

9. Outside Consultations

States have been given the opportunity to comment and offer input regarding the drug rebate program via weekly teleconferences conducted by HCFA. Representatives from the State Technical Advisory Group and the American Public Welfare Association were participants in the teleconferences. Discussions included all aspects of the drug rebate program including the quarterly reporting process. There are no major issues unresolved.

10. Confidentiality

Confidentiality has been assured in accordance with section 1927(b)(3)(D) of the Social Security Act.

11. Sensitive Questions

There are no questions of a sensitive nature.

12. Cost Estimates

The estimate of annualized cost to the Federal Government is $79,652. The cost estimate is computed as 75 percent (Federal share) of the States' costs.

The estimate of annualized cost to the State governments is $106,203. The State employee hourly wage figure is computed as 80 percent of a GS–12, step 1 annual salary, plus 20-percent retirement/insurance. The State cost is computed as follows:

$37,294×80 percent=$29,835+$5,967 (20-percent retirement/insurance)+$35,802−2,080 hours per year=$17.21 per hour

$17.21 per hour×6,171 hours per year=$106,203 per year

13. Estimate of Burden

The State burden associated with the drug rebate program includes the reporting of administrative data (one-time submittal of contact persons and a list of drug manufacturers with which the State has a current rebate agreement). In addition, a burden is associated with the quarterly drug utilization reports.

All State agencies will be reporting drug utilization data to drug manufacturers and HCFA. These reports will be submitted to HCFA via magnetic media. However, HCFA has no control over the vehicle by which States report to the drug manufacturers. The States and the drug manufacturers must come to an agreement on data transmission. Some States are opting for the use of hard copy reports while others are planning to use magnetic media. States which opt to report via hard copy are required to use the format associated with the HCFA–R–144.

The burden hours below for quarterly reports are a total average for both types of data transmission. (A revised burden estimate will be calculated when the States have established a permanent vehicle for data transmission.)

The following is a calculation of the burden estimates.

One-time submittal data	
Administrative data reports: 51 States×1 hour each	51
Quarterly Utilization Reports	
51 States×30 hours×4 quarters	6,120
Total Annual Hours	6,171

14. Changes in Burden

There is no change in the burden estimate.

15. Publication and Tabulation Data

There are no plans to publish the information for statistical use.

16. Collections of Information Employing Statistical Methods

There are no statistical methods employed with this data collection.

BILLING CODE 4120-03-M

MEDICAID DRUG REBATE PROGRAM
STATE AGENCY CONTACT FORM

STATE AGENCY NAME

TECHNICAL CONTACT: Person responsible for sending and receiving data.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF FISCAL AGENT (if applicable)

STREET ADDRESS

CITY STATE ZIP CODE

PROGRAM POLICY CONTACT: Person responsible for policy decisions.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF FISCAL AGENT (if applicable)

STREET ADDRESS

CITY STATE ZIP CODE

MEDICAID DRUG REBATE PROGRAM
STATE AGENCY CONTACT FORM

PAGE 2 OF 2

STATE AGENCY NAME

FOR EACH LABELER WITH WHOM THE STATE HAS SIGNED AN EXISTING REBATE AGREEMENT:

LABELER	EFFECTIVE DATE (MMDDYY)	* ENDING DATE (MMDDYY)

IF THERE ARE MORE THAN 20 EXISTING AGREEMENTS PLEASE MAKE COPIES OF THIS PAGE.

* Date on which initial termination of agreement occurs

BILLING CODE 4120-03-C

HCFA RECORD SPECIFICATION MEDICAID DRUG REBATE DATA RECORD FORMAT

Field	Size	Position	Remarks
Record ID	4	1–4	Constant of "01**"
State Code	2	5–6	P.O. Abbreviation
Labeler Code	5	7–11	NDC No. 1
Product Code	4	12–15	NDC No. 2
Package Size Code	2	16–17	NDC No. 3
Period Covered	3	18–20	QYY
Prd. FDA Reg. Name	10	21–30	
Rebate Amt. per Unit	11	31–41	99999V999999
Total Units Reimbursed	12	42–53	999999999V999
Total Rebate Amt. Claimed	9	54–62	9999999V99
No. of Prescriptions	6	63–68	999999
Total Reimbursement Amt	10	69–78	99999999V99
Correction Flag	1	79–79	See Data Element Definitions
Filler	1	80–80	

Source: State Agencies.
Target: HCFA & Manufacturers.
Version 1, 2/13.

Page _____ of _____
State of _____
_____ Medicaid agency
Date:
Source: State agencies

Target: Manufacturers
Medicaid Drug Rebate Invoice
Manufacturer: _____
Address 1: _____
Address 2: _____

City: _____ State: _____
Zip: _____
State code: _____
Invoice #: _____
Period covered: _____

NDC Number	Drug name	Rebate amt. per unit	Total units reimb.	Total rebate amt. claimed	No. of Scripts	Total reimb. amount	Cor. flg.
		Totals:		*			

*Please remit this amount to: _____
Medicaid Agency
Address: _____

Note: NDC# =Labeler Code (5): Product Code (4); Pkg. Size Code (2).

Public reporting burden for this collection of information is estimated to average 30 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Health Care Financing Administration, P.O. Box 26684, Baltimore, Maryland 21207, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Paperwork Reduction Project (0938–)

States' Magnetic Tape Media Survey

HCFA needs to determine what characteristics the format of drug rebate data will take. HCFA operates in an IBM MVS/XA environment and supports both 3480 cartridge and 1600/6250 bpi round tape media. The use of 3480 cartridge is the more preferable method of transmitting portable media to and from HCFA.

HCFA is interested in your systems capabilities to produce and receive magnetic tape media.

Please complete this questionnaire and return to HCFA.

A. Make and model of your mainframe computer _____

B. Operating System _____

C. Magnetic Tape Media Information
1. Tape Cartridge _____ Yes _____ No
2. Round Tape Reel _____ Yes _____ No
If Yes to C2: _____ Mini _____ Full Reel
Tape Density: _____ 1600 pbi _____ 6250 bpi

D. Given a preference, which of the above options would you choose to produce and receive drug rebate data to and from HCFA?

[FR Doc. 91–10039 Filed 4–30–91; 8:45 am]
BILLING CODE 4120–03–M

Health Care Financing Administration

[IOA–030–N]

Medicare Program; Advisory Committee on Medicare-Physician Relationships; Meetings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meetings of the Advisory Committee on Medicare-Physician Relationships on May 16 and May 17, 1991 and on June 6 and June 7, 1991.

DATES: The meetings will be open to the public on May 16, 1991 from 9 a.m. until 5 p.m.; on May 17, 1991 from 9 a.m. until 1 p.m.; on June 6, 1991 from 9 a.m. until 5 p.m.; and on June 7, 1991 from 9 a.m. until 1 p.m. Attendance by the public is limited to space available.

ADDRESSES: The meetings will be held in the Main Auditorium, Lobby Level,

Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Advisory Committee on Medicare-Physician, Relationships, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 245–7874.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act (Pub. L. 92–463, enacted on October 6, 1972) the Secretary of the Department of Health and Human Services established the Advisory Committee on Medicare-Physician Relationships. The Committee advises the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare's beneficiaries and on Peer Review Organization (PRO) and carrier policies and procedures. The Advisory Committee looks at the methods to improve Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. This Committee does not consider payment issues.

The Committee consists of the Senior Medical Advisor of the Health Care Financing Administration (HCFA) as chair, and seven members selected by the Secretary who are practicing physicians representing the primary care, internal medicine, and surgical disciplines. Members are invited to serve for the duration of the Committee. The members are: Lanny R. Copeland, M.D., Ulton G. Hodgin, Jr., M.D., Edward A. Rankin, M.D., Barbara Ann P. Rockett, M.D., Mark C. Rogers, M.D., Richard B. Tompkins, M.D., and Susan L. Turney, M.D. The chairperson is Nancy Gary, M.D.

The agenda for the May 16 meeting is an orientation. For the May 17 meeting, the agenda includes: Medicare claims submittals and claims adjudication requirements, including codes, mandatory claims submission, electronic billing, durable medical equipment necessity form, fee disclosure for non-emergency surgery, and the unique physician identifier number.

The tentative agenda for the June 6 meeting will include discussion of the following topics: Committee review; coverage and medical review, including coverage variation, coverage for new procedures, carrier notice and comment process for medical review policy, release of medical review parameters, medical necessity denials and downcoding, documentation requests, rebundling CPT–4 codes, and post-payment audits of physician claims; and the carrier appeals process, including notification, documentation, and timeliness of decision.

Tentatively, the agenda for the June 7 meeting will include discussion of the following issues: Carrier communications, including written and telephone communications, beneficiary explanation of Medicare benefits, notices, carrier newsletters and bulletins, and the medical director's role and responsibility.

Those individuals or organizations who wish to make 10-minute oral presentations on the topics listed above must contact the executive director to be scheduled. For the name, address, and telephone number of the executive director, see the "FOR FURTHER INFORMATION CONTACT" section at the beginning of this notice. A written copy of the oral remarks must be presented to the executive director at the time of the presentation. Anyone who is not scheduled to speak may submit written comments to the executive director.

The Committee is to report to the Secretary through the Administrator, HCFA, not later than December 31, 1991.

Authority: Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. app. I)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 25, 1991.

Matthew Crow,

Executive Director, Advisory Committee on Medicare-Physician Relationships.

[FR Doc. 91–10413 Filed 4–30–91; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on June 3–5, 1991. The meeting will be held in the 11th floor solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on June 3 from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 2:30 p.m. On June 4 the meeting will be open from 8 a.m. until 9:40 a.m. During the open sessions, the permanent staff of the Laboratory of Immunology and the Biological Resources Branch will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 3 from 8:30 a.m. until 9 a.m., from 12:30 p.m. until 1:30 p.m., from 2:30 p.m. until 5 p.m., on June 4 from 9:45 a.m. until recess and on June 5 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, room 11C103, telephone (301–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health.)

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10196 Filed 4–30–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Dental Research; Meeting of NIDR Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on June 6–7, 1991, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on June 6 and from 9 a.m. until 1 p.m. on June 7. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public

from 1 p.m. until adjournment on June 7 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH Building 30, room 132, Bethesda, Maryland 20892 (telephone 301–496–1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10197 Filed 4–30–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), May 16, 17, and 18, 1991, National Institutes of Health, Building 2, room 102, Bethesda, Maryland 20892. This meeting will be open to the public on May 16 from 8:50 p.m. to 9:30 p.m., May 17 from 9 a.m. to 12 noon and again from 2 p.m. to 4:30 p.m., and May 18 from 9 a.m. to 10:30 a.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 16 from 8:20 p.m. to 8:50 p.m., May 17 from 12 noon to 2 p.m. and again from 4:30 p.m. to recess, and May 18 from 10:30 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, room 9A19, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, National Institutes of Health, Building 10, room 9N–222, Bethesda, Maryland 20892, (301) 496–4128.

Dated: April 17, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–10198 Filed 4–30–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Committee to Coordinate Environment Health and Related Programs Ad Hoc Subcommittee on the Benefits of Dental Amalgam

Notice is hereby given that the Committee to Coordinate Environmental Health and Related Programs (CCEHRP) Ad Hoc Subcommittee on Benefits of Dental Amalgam is soliciting copies of peer reviewed scientific studies of the health benefits of dental amalgams.

CCEHRP is a standing internal committee of the Public Health Service (PHS) established by the Assistant Secretary for Health to coordinate and promote the exchange of environmental health information; to carry out efforts which encourage consensus on environmental health related research, exposure assessments, risk assessments, and risk management procedures; and to serve as the primary focal point within the Department of Health and Human Services for information coordination within and outside the Department on environmentally related issues. The Committee is composed of agency heads and subagency heads of the Public Health Service and is chaired by the Assistant Secretary for Health.

The Assistant Secretary for Health has established a process by which the CCEHRP will review the health risks and health benefits of dental amalgams. To accomplish the benefit portion of this task, the Ad Hoc Subcommittee on Benefits of Dental Amalgam requests copies of peer reviewed research publications and/or research for which articles are pending publication in peer reviewed journals.

All materials should be submitted within 30 days of the publication of this notice. Please send all responses to Dr. William G. Kohn, National Institute of Dental Research, National Institutes of Health, 9000 Rockville Pike, Building 31, room 2C34, Bethesda, Maryland 20892, telephone 301/496–9469.

Dated: April 19, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91–10199 Filed 4–30–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N–91–3257]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments on the proposed requirements must be received by May 13, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C., chapter 35). It is also requested that OMB complete its review within five (5) days, after the end of the public comment period.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the

proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 18, 1991.

Ronald Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collection information from lenders for section 325 program using the Single Family Insurance Premium Remittance Summary form HUD–2748.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: In accordance with the Omnibus Budget Reconciliation Act of 1990 and the National Affordable Housing Act of 1990, the Department of Housing and Urban Development will begin to collect risk-based premiums for mortgages insured under the provisions of the Mutual Mortgage Insurance Fund. Section 325 dictates the collection of up-front premiums and the collection of annual periodic premiums for a particular number of years. The fiscal year in which the loan goes to closing as well as the loan-to-value ratio determine the period over which annual premiums will be collected.

Forms: HUD–2748.

Respondents: HUD-approved mortgages will hold mortgages insured under section 325 of the Mutual Mortgage Insurance Fund.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–2748: (Sec. 530)	8,000		12		.5		48,000
Form HUD–2748: (Sec. 325)	8,000		12		.25		24,000

	Number of recordkeepers	×	Annual hrs per recordkeeper	×	Total recordkeeping hrs
Form HUD–2748: (Sec. 530)	8,000		1.5		12,000
Form HUD–2748: (Sec. 325)	8,000		.75		6,000

Status: Revision.

Contact: Lisa Giarrusso, SFIOD (202) 708–1696, Wendy Sherwin, OMB (202) 385–6880.

Justification and Supporting Statements

The following justification conforms with the SF83A specific Instructions under A. Justification.

1. A new premium method was instituted by both the Omnibus Budget Reconciliation Act of 1990 (approved 11/5/90) and the Cranston-Gonzalez National Affordable Housing Act of 1990 (approved 11/28/90). It addresses the concern for the financial health of the FHA fund, pertains to all new MMI cases, and will become effective during June 1991, on a date to be announced by rule published in the **Federal Register.**

Section 325 of the Cranston-Gonzalez National Affordable Housing Act dictates the collection of up-front premiums and the collection of annual periodic premiums for a particular number of years The fiscal year in which the loan goes to closing, as well as the loan-to-value ratio, determine the period over which annual periodic premiums will be collected. OMB has required that these annual periodic premiums be remitted to the Department on a monthly basis.

Form HUD–2748 is the currently approved Remittance Summary document which is completed by each remitting mortgagee to document and allocate each month's portion of their annual MIP remittance under the section 530 program.

This existing form can be used to address, in part, reporting requirements for the new section 325 collection program. Mortgagees will also be required to submit, under separate cover, monthly listings of section 325 cases for which payment was made and the payment amount. This information may be provided in tape format or hard copy at the lenders option, and will be addressed in a separate Mortgagee Letter. Reporting burden associated with this data submission is included in the annual reporting or disclosure burden shown in block 17 on the SF83.

2. The information is used to ensure compliance on the part of the mortgagee and to ensure that HUD receives all income due. Without this remitting information HUD could not ensure compliance with the requirements of the section 325 program nor could HUD ensure that all income due the government was being remitted.

3. HUD's Single Family Monthly Premium Collection System is automated. This system was implemented in September 1982, and is reviewed annually. No technical or legal obstacles have been identified.

4. There will be no duplication of collection of this data information since this is the only system under which the particular information will be gathered.

5. There is no similar information currently available.

6. Most participants are large mortgage bankers or mid-size bankers who utilize computer service bureaus. The remittance system features numerous options for the mortgagee, manual or automated form completion and lockbox check depositing or wire transfers of funds. For non-automated mortgagees, the form requires little completion time and does not represent a substantial burden.

7. Legislation requires prompt remittance of mortgage insurance premiums. HUD would be in violation of the law if less frequent collection were made.

8. The information is not being collected in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Not applicable.

10. Not applicable.

11. Not applicable.

12. This form is part of the mortgagee's overall mortgage servicing operations which produce a profit for the mortgagee. Costs for processing and record keeping for form HUD–2748 are estimated at $828,000 annually (based on 138,000 burden hours at $6.00 per hour). Other costs, such as reproduction of the form HUD–2748, are negligible.

Estimate of annualized cost to the Federal Government is as follows:

	Sec. 530	Sec. 325
Cost of data entry, and automated processing	$300,000	$150,000
Cost of receiving and filing of the forms (estimated eight staff years at the GS–9 step 5 level)	151,848	113,886
	451,848	263,886
Cost to Government	715,734	

13. The number of participating mortgagees varies, but averages at 8,000. Each mortgagee must submit a separate form HUD–2748 for remittances under the section 530 program and the new (Risk-base) section 325 program each month. Total responses will amount to 192,000 annually. The time required to complete these forms is based upon manual form completion.

14. Section 325 is a new Mortgage Insurance Premium collection program for the Department, but contains a periodic collection requirement similar to the existing section 530 program. Form HUD–2748 will support both the existing section 530 and section 325 Mortgage Insurance Premium collection activities. Section 530 activity and section 325 activity cannot be combined due to the new case level reporting and reconciling requirements for section 325.

15. Not applicable.

Attachment: Form HUD–2748

BILLING CODE 4210–27–M

ATTACHMENT

Premium Remittance Summary

Single Family Mortgage Insurance

U.S. Department of Housing and Urban Development
Office of Housing

Please refer to the Instructions on the back of this form.

OMB Approval No. 2502-0421 (exp. 2/28/93)

1. Mortgagee or Servicer:
Code No. | Name and Address

2. Prepared by | Phone No.

3. Remittance for
(Month) , 19

4. Remittance Summary. Premium remittance enclosed is allocated to premium anniversary dates as shown below.

	Month	Year	
a.	01 Jan.		$
b.	02 Feb.		$
c.	03 Mar.		$
d.	04 Apr.		$
e.	05 May		$
f.	06 Jun.		$
g.	07 Jul.		$
h.	08 Aug.		$
i.	09 Sep.		$
j.	10 Oct.		$
k.	11 Nov.		$
l.	12 Dec.		$
m.			$
n.			$
o.			$
p.	Total Premiums Remitted (Sum of a. through o., above)		$
q.	Plus Late Charge @ 4% (if submitted after the 10th)		$
r.	Interest Charge included (see instructions)		$
s.	**Total Remittance Enclosed**		$
t.	Number of checks accompanying this form		

HUD Use Only

Date Received

5. Mortgage Activity Summary. Count of mortgages for which your organization was the holder and servicer or servicer only, during the month being reported.

a. Beginning Balance (must equal last month's *Ending Balance*)	
b. New Mortgages Serviced This Month	+
c. Mortgages Transferred In This Month	+
d. Mortgages Transferred Out This Month	-
e. Mortgages Terminated This Month	-
f. Balance of Mortgages on Hand at End of Month (sum of a through e, above)	
g. Total Number of Individual Mortgages Represented by This Remittance	

5. Have you previously submitted other remittance forms for this same accounting period?

☐ No ☐ Yes If "Yes", how many? _____

6. Certifications. (Important - See instructions)

☐ a. I certify that this remittance represents the total of all Single Family premium payments collected from mortgagors during the preceding calendar month plus the total annual premium payments due to HUD during this reporting period for Single Family mortgage insurance under the HUD program. I further certify that the mortgage summary information given on this form is true and correct.

Authorized Signature | Date Signed

X

☐ b. I certify that this remittance represents 1/12th of the total annual premiums for all HUD-insured Single Family mortgages serviced by my organization during the preceding calendar month, plus the total annual premium payments due to HUD during this reporting period for Single Family mortgage insurance under the HUD program. I further certify that the mortgage summary information given on this form is true and correct.

Authorized Signature | Date Signed

X

form HUD-2748 (8/89)
ref. handbook 4110.1

Instructions

This form shall be completed and sent to HUD monthly by each mortgagee servicing Single Family HUD Mortgages, whether or not any payment is to accompany the form.

Mailing Instructions. This form and payment must be mailed to the address specified in the Supplemental Instructions, Mailing of Remittances. Those instructions provide remittance addresses which correspond to the remitter's ZIP code. Only remittances should be mailed to these addresses; do not include other mortgage action forms.

1. Mortgagee or Servicer Code Number, Name and Address. Enter the servicing mortgagee's 5-digit identification code. The organization's name, street address, city, state and ZIP code must be typed, printed or stamped.

2. Prepared by. Enter the name and telephone number of a person to contact with questions about the form.

3. Remittance for the month of. Enter the calendar month and year inwhich the MIP payments were collected.

4. Remittance Summary.

Lines **a.** through **l.** These lines are to be used to allocate, by amortization anniversary month and year, all premium amounts being remitted. Enter amounts remitted for all mortgages in your portfolio by the month and year in which the annual premium for these cases are due.

Example: Remittance for month of April 1989.

a.	01	Jan.	8	9	$1000.00
b.	02	Feb.	8	9	$1000.00
c.	03	Mar.	8	9	-0-
d.	04	Apr.	8	9	$500.00

The zero premium amount in month 03 indicates one of the following:

The mortgagee services no cases that bear an amortization anniversary month of March; **or**
The mortgagee collected no payments for cases having this anniversary month and March is not the current month.

Lines **m.** through **o.** These lines are used to allocate premium remittances for mortgages whose annual premiums are due in months and years other than those reflected in lines a. through l. Enter the annual premium anniversary month(s) and year(s) and the amount(s) remitted

Example:

m.	11		8	8	$ 600.00
n.	04		8	7	$1500.00
o.					

Line **p.** Enter the sum of lines a. through o.

Line **q.** If the postmark date of this remittance will be later than the 10th of the month, enter 4% of the amount on line p.

Line **r.** Enter the amount of interest charges enclosed for amounts remitted 30 or more calendar days after payment due date. Interest charge at rate established by HUD applied to "Total Premiums Remitted" amount on line n for each such 30 day period or fraction thereof.

Line **s.** Enter the sum of lines p., q., and r. The amount of the check or checks enclosed with this form must equal the amount on line s.

Line **t.** Enter the number of payment checks enclosed with this form. Except under unique circumstances, only one check should be used.

5. Mortgage Activity Summary. This block is a monthly inventory of the portfolio counts of HUD Single Family Mortgages serviced by your organization and the activity for the month. The information must be submitted each month whether or not any monies are remitted.

Lines **a.** to **f.** Counts are for the remittance month only.

Line **g.** Enter the number of uniquely identified mortgages being paid. For example, if two monthly payments are included for a single mortgage, the mortgage is counted only once.

6. If you have previously submitted a Remittance Form for the same month ("Remittance for the Month" in block 2), indicate by checking the "Yes" box. If yes, indicate total number of such forms previously submitted.

7. Certifications. Two certifications are available to the servicing mortgagee. The one chosen indicates the method of remittance selected by the servicer:

remittance of all premiums collected in one month; **or**
remittance of 1/12th of all annual premiums for all cases serviced each month.

Once selected, the servicing mortgagee cannot change the method of remitting monthly premiums without prior approval from the Department of Housing and Urban Development (HUD). Therefore, the certification chosen on the mortgagee's first remittance form must be the one attested to each month by an official. Check the box beside the certification statement selected for signature by an authorized official of the servicing organization. The official should sign and record the date such certification was made.

[FR Doc. 91-10225 Filed 4-30-91; 8:45 am]
BILLING CODE 4210-27-C

Office of Administration

[Docket No. N-91-3259]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposd information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35)..

The Notices list the following information: (1) The title of the information collection proposal: (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submissions including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 15, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to MOB

Proposal: Relocation and Acquisition Recordkeeping requirements under the uniform relocation assistance and real property acquisition policies act of 1970, as amended (URA), implementing regulations at 49 CFR part 24, and related HUD program regulations.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: Agencies that acquire real property or displace property occupants must collect information to process claims, make payments and document compliance with 49 CFR part 24 and HUD program rules. Expanded URA coverage (effective April 2, 1989) and new HUD-assisted programs have increased the overall reporting burden.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	2,000		1		85		170,000

Total Estimated Burden Hours: 170,000.

Status: New.

Contact: Harold J. Huecker, HUD, (202) 708–0336, Wendy Sherwin, OMB, (202) 395–6880.

Dated: April 15, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Management Assessment Program: Indicators and Standards.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Indicators and Standards will be used to assess the Management Performance of PHAs, designate troubled PHAs and MOD troubled PHAs, address deficiencies through a Memorandum of Agreement for each troubled PHA, and annually submit to Congress a report on the status of troubled and MOD troubled PHAs.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	3,268		1		3,41		11,162

Total Estimated Burden Hours: 11,162.
Status: New.
Contact: Wanda Funk, HUD, (202) 708–0970, Wendy Sherwin, OMB, (202) 395–6880.

Dated: April 15, 1991.

[FR Doc. 91–10224 Filed 4–30–91; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–91–4410–08; GP1–195]

Planning Amendment; Baker Resource Management Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Baker Resource Management Plan.

SUMMARY: In accordance with 43 CFR 1610.2, the Baker Resource Area, of the Vale District, on the date of this notice, announces that an environmental analysis to designate 1,288 acres of public land on the South Fork of the Walla Walla River as an Area of Critical Environmental Concern (ACEC) is being prepared. The proposed ACEC would be designed to protect outstanding scenic qualities, fisheries and riparian values, Threatened/Endangered and/or sensitive plant species, and biodiversity while providing for existing and future recreation opportunities. Factors which will be included in the analysis include the Bull trout, a Category 2 Candidate under the Endangered Species Act; margined sculpin, a State of Oregon listed sensitive species; and critical winter range for Rocky Mountain elk.

The area under consideration for designation is between Harris Park and Elbow Creek on the South Fork of the Walla Walla River in Umatilla County, Oregon. Public comments on the adequacy of the analysis will be accepted for 30 days from the date of this notice. Documents pertinent to this proposal may be examined at the address shown below.

Upon designation of this area as an ACEC, a site specific Recreation Area Management Plan (RAMP) is proposed to be developed which will analyze and define public recreational use zones and establish a plan for recreational development as well as protection of the ACEC values.

The following disciplines are represented on the BLM planning team: Wildlife management, recreation management, fisheries management, range management, forestry, botany, cultural resource management, and hydrology. Planning criteria include: Policy, legal and regulatory constraints, as well as, requirements to maintain riparian vegetation quality, maintain scenic values, maintain recreational values and meet recreation demands, and set management objectives to protect the resources identified within the proposed ACEC.

FOR FURTHER INFORMATION CONTACT: Dorothy Mason, Bureau of Land Management, Baker Resource Area, P.O. Box 987, Baker, Oregon 97814; Telephone (503) 523–6391.

Geoffrey B. Middaugh,
Associate District Manager.

[FR Doc. 91–10191 Filed 4–30–91; 8:45 am]
BILLING CODE 4310–33–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 that the Canon City District Advisory Council (DAC) Meeting will be held Thursday, May 30, 1991, 10 a.m. to 4:30 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Briefing on the Arkansas River Wild and Scenic River Study;
2. Wild and Scenic River Workshop;
3. Update on current programs/projects in the Canon City District;
4. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESSES: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 2200, 3170 East Main, Canon City, Colorado 81215–2200, by May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (710) 275–0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Stuart L. Freer,
Associate District Manager.

[FR Doc. 91–10241 Filed 4–30–91; 8:45 am]
BILLING CODE 4310–JB–M

[CA–050–4212–13; CA–27838]

Realty Action; California

AGENCY: Bureau of Land Mangement, Department of the Interior.

ACTION: Correction to Notice of Realty Action CA–27838, in Lake, Colusa, Napa, Yolo and Medocino Counties, California.

SUMMARY: The Notice of Realty Action published on Thursday, January 31, 1991, in Volume 56, No. 21 of the Federal Register, Page 3839 and Page 3840, is hereby corrected as follows:

1. on line 65 in column 1 on page 3839 which reads section 16: "W½NE¼, SE¼NE¼, W½, SE¼" should read section 16: "All" located in T. 12 N., R. 5 W.

2. On line 20 in column 2 on page 3839 which reads section 30: "S½" should read Sec 30: "Lot 3 & 4, E½SW¼, SE¼." located in T. 14 N., R. 5 W.

3. On line 30 in column 1 on page 3840 which reads by right-of-way No. "* * * CA–14770* * * *" should read * * CA–14470 * * * " These were error and are being corrected.

FOR FURTHER INFORMATION CONTACT: Cathrine Robertson, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Lesslie Street, Ukiah, California 94582: Phone (707) 462–3873.

Dated: April 1, 1991.

Cathrine Robertson,
Clear Lake Resource Area Manager.

[FR Doc. 91–10242 Filed 4–30–91; 8:45 am]
BILLING CODE 4310–40–M

[ID–020–4760–02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on June 5, 1991. The meeting will convene at 9 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Review New Charter, (2) Reorganization of the

Council, (3) Drought Report, (4) Clean Water Act, (5) Geographic Information System/Global Positioning System Demonstration, (6) Sharptailed Grouse Research Study Update, (7) Recreation and Wildlife 2000 Initiatives, (8) FY–1993 Program Year Budget Issues/FY–1992 Budget Proposals, (9) Range Management Update.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 11:30 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: April 22, 1991.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, Burley District Manager, (208) 678–5514.

Dated: April 22, 1991.

Gerald L. Quinn,

District Manager.

[FR Doc. 91–10189 Filed 4–30–91; 8:45 am]

BILLING CODE 4310–66–M

[WY–010–01–4212–14; W–119049]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Park County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the following land is suitable for direct sale to The King's Ranch under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 2757), (43 U.S.C. 1713, 1719), (43 CFR 2711.3–3 (1) and (5)), and (43 CFR part 2720) at not less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Sixth Principal Meridian,

T. 52 N., R. 105 W.,
Sec. 25, lot 4.

The above lands aggregate 39.09 acres.

FOR FURTHER INFORMATION CONTACT: Duane Whitmer, Area Manager, Bureau of Land Management, Cody Resource Area, P.O. Box 518, Cody, Wyoming 82414, 307 587–2216.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land is being offered by direct sale to The King's Ranch, a nonprofit organization. The sale will allow expansion of the organization, as well as clear up a need to resolve inadvertent occupancy use of the land which clouds title to both the public and private lands. The sale is in conformance with the Cody Resource Management Plan approved November 8, 1990.

The King's Ranch will be required to submit a nonrefundable application fee of $50.00 in accordance with 43 CFR part 2720, for conveyance of all unreserved mineral interests in the lands. Grazing privileges of The King's Ranch will be reduced upon completion of the sale. The King's Ranch waived its right to a 2-year continuance of this privilege on February 20, 1991.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of oil and gas to the United States and any existing leases.
3. All other existing rights of record.

Detailed information concerning the sale are available for review at the Cody Resource Area Office, Worland District, Bureau of Land Management, 1714 Stampede Avenue, Cody, Wyoming 82414.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Worland District Office, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

R. Gregg Berry,

Associate District Manager.

[FR Doc. 91–10228 Field 4–30–91; 8:45 am]

BILLING CODE 4310–22–M

[NV–930–91–4212–13; N–39112]

Nevada; Opening of Public Lands

April 19, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; issuance of land exchange conveyance document and order providing for opening of land, Nevada.

SUMMARY: This notice identifies Federal and non-Federal land involved in a recently completed exchange transaction. The mineral estates in the Federal and non-Federal land are owned by the United States.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785–6530.

SUPPLEMENTARY INFORMATION: On April 10, 1991, the United States issued Patent No. 27–91–0083 to Kenneth R. Gragson, Trustee, for the following described land pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 21 S., T. 60 E.,
Sec. 24, SE¼SW¼NW¼.

The area described contains 10 acres in Clark County, Nevada.

In exchange for that land, the United States acquired the following described land from the above-named party:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 24, SE¼SE¼NW¼.

The area described contains 10 acres in Clark County, Nevada.

Title to the non-Federal land was accepted on April 5, 1991. This was an equal value exchange.

The purpose of the exchange was to rectify an oversight on the part of the United States. When the non-Federal land was originally conveyed out of Federal ownership, the patent failed to identify the existence of a right-of-way for flood control channel purposes that had been granted to Clark County Department of Public Works.

At 10 a.m. on May 31, 1991, the land acquired by the United States will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

All valid applications received at or prior to 10 a.m. on May 31, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on May 31, 1991, the land acquired by the United States will be open to location under the United States mining laws and to applications under the material sale laws.

Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to applications and offers under the mineral leasing laws.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 91-10190 Filed 4-30-91; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

North American Datum 1983 Implementation Plan

Within the continental United States, horizontal positioning data (latitude, longitude, and plane coordinate systems) have been successively based on a series of datums. On December 6, 1988, the Federal Geodetic Control Committee (FGCC) adopted a policy mandating that Federal civilian agencies engaged in surveying and mapping activities convert from the existing North American Datum (NAD) 27 to the new NAD 83. The FGCC provided for an orderly transition by stating that the conversion effort is to be implemented to the extent practicable, legally allowable, and feasible.

MMS NAD 83 Implementation Plan

The Minerals Management Service (MMS) will begin a three-phased conversion to the new official U.S. horizontal control datum, NAD 83 in Fiscal Year 1991. This approach, which should minimize transition difficulties, may require more than 10 years to complete. The goals of this implementation are for the MMS to remain conversant with its constituencies and to develop a uniform cadastre throughout the Outer Continental Shelf (OCS).

Implementation timeframes will be developed on a Region specific basis.

Implementation Phase I

The initial implementation phase will require approximately 3 years. It is intended to identify the survey datum of existing data held by the MMS in each OCS Region (Alaska, Atlantic, Gulf of Mexico, and Pacific), and to ensure that new information submitted to the MMS is compatible with preexisting data.

Phase I will establish control over the flow of information used within the agency. In addition, federally-endorsed datum transformation computer software known as NADCON will be used to convert existing NAD 27-based cadastre coordinates into NAD 83 equivalents. The resulting NAD 83 coordinate equivalents will be made available to the public for orientation and convenience. However, the NAD 83 cadastre equivalents (e.g., block corners and boundary intersections) will not be considered official for legal purposes. An NAD 27 leasehold will continue to reference that datum until the lease is terminated, relinquished, or expires. Further, depending upon the implementation phase of the OCS Region at the time the leasehold is terminated, relinquished, or expires, the block may be redefined on the NAD 83 cadastre. All leasing will be performed on NAD 27 until a Region implements Phase III of this plan or implements it for a standard subdivision of the Region (e.g., a planning area).

During Phase I, NAD 83 will become the datum of preference; however, NAD 27-based information will be permitted provided that the datum (i.e., NAD 27) is explicitly identified. Whenever the datum is unknown, that data will be unacceptable. The MMS will notify their constituencies within the oil and gas industries through notices in the **Federal Register** and Notices to Lessees, as well as other mailing lists, in an attempt to inform the public of this requirement. Furthermore, all permits to perform geophysical surveys will require the permittee specify the geodetic datum when data are submitted to the MMS.

The end of Phase I, in approximately 1993, coincides with the establishment of a full constellation of Global Positioning System satellites. At that time, it is expected that NAD 83 will be the dominant navigation and positioning system on the OCS.

Implementation Phase II

Phase II will solidify the usage of NAD 83 as the primary survey datum for the agency. The MMS's automated systems such as the Outer Continental Shelf Information System and the Offshore Block, Boundary, and MAP/OPD Information System are scheduled for completion during this phase. These systems are the foundation which facilitate the development of the NAD 83-based cadastre.

Phase II will require that all data submitted to the agency must be referenced to NAD 83. Data based on NAD 27 will be unacceptable without the explicit written permission of the appropriate Regional Director or Program Officer on a case-by-case basis. In Phase II, the offshore cadastre will continue to be defined on NAD 27, with NAD 83 equivalents being made available when appropriate.

Implementation Phase III

Phase III will bring the MMS into full compliance with NAD 83 usage and includes the establishment of a new NAD 83-based OCS cadastre (regridding). The NAD 83 cadastre offshore of the continental United States will strictly adhere to the definitive parameters of the Universal Transverse Mercator (UTM) Projection, using the Geodetic Reference System of 1980 (GRS 80) as the reference ellipsoid. Official Protraction Diagrams (OPD's) will depict a metric grid with full grid blocks being 4800-by-4800 meters throughout the OCS.

The OPD's for Hawaii and the U.S. dependencies will also portray a metric cadastre based upon a strict adherence to the definitive parameters of the UTM. However, due to the physical separation of these areas from the continental United States, the World Geodetic System of 1984 may be used as the reference ellipsoid instead of GRS 80. Since the offshore program in these areas may not be the same as for offshore of the continental United States, a different sized grid (block size) may be used.

Timeframes

Each Regional Director will determine their own NAD 83 implementation timeframes based upon MMS conversion experiences, leased areas, sale activities, and the 5-year schedule. Implementation will proceed on a planning area and/or sale area basis. The timeframes shown below are the current recommendations for implementing NAD 83.

PROJECTED IMPLEMENTATION TIMEFRAMES

OCS region	Phase I	Phase II	Phase III
Alaska	Present–1992	1992–1993	1993–1996.
Atlantic	Present–1992	1992	1992–1997.
Gulf of Mexico	Present–1993	1993–1995	1995–until completed.
Pacific	Present–1993	1993–1995	1995–until completed.

Additional Information

The MMS implementation of NAD 83 is expected to be a long-term, dynamic process, requiring periodic updates or supplementary information. Technical NAD 83-related questions and requests for information should be directed to:

Department of the Interior, Minerals Management Service, Mapping and Survey Group, P.O. Box 25165, MS–4421, Denver, CO 80225, Attn: Leland F. Thormahlen, Phone: (303) 236–7050, FTS: 776–7050.

As official updates to the MMS NAD 83 Implementation Plan become available, they can be obtained from the Public Affairs office in each OCS Region:

Minerals Management Service, Alaska OCS Region, 949 East 36th Ave., rm. 110, Anchorage, AK 99508–4302, Phone: (907) 261–4010, FTS: 869–4010.

Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394, Phone: (504) 736–0557, FTS: 668–0557.

Minerals Management Service, Atlantic OCS Region, 381 Elden St., suite 1109, Herndon, VA 22070–4817, Phone: (703) 787–1113, FTS: 393–1113.

Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, Phone: (805) 389–7520, FTS: 683–7520.

Dated: April 23, 1991.

Approved:

Barry A. Williamson,

Director, Minerals Management Service.

[FR Doc. 91–10255 Filed 4–30–91; 8:45 a.m.]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–310]

Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on March 27, 1991 of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–310, Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries in Overseas Markets, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). As requested, the study will focus on the conditions of competition between the United States and Canada in hay products, including alfalfa pellets and cubes (dehydrated and sun-cured). The letter said that USTR was specifically interested in receiving information regarding the competitive conditions of the U.S. and Canadian alfalfa industries in overseas markets, especially in the Pacific Rim countries, and the effects of Canadian government programs on those competitive conditions. As requested by the USTR, the Commission will submit its report not later than December 31, 1991.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the study, contact John Pierre-Benoist (202–252–1320) or David Ingersoll (202–252–1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of the study, contact William Gearhart (202–252–1091), Office of the General Counsel, U.S. International Trade Commission.

BACKGROUND: As requested by the USTR, the Commission will seek to provide in its report, to the extent possible, the following information:

(1) A description of the U.S. and Canadian dehydrated and sun-cured alfalfa products industries, including patterns of production, processing, and consumption since 1981;

(2) A description of the current conditions of trade in dehydrated and sun-cured alfalfa products between the United States, Canada, and the rest of the world, especially the Pacific Rim countries, and any recent changes in such conditions, including information on prices, exchange rates, transportation costs, and marketing practices (to the extent such practices have measurable effects);

(3) A description of the purpose, nature, and use of Federal, State, or Provincial Government (either U.S. or Canadian) programs and policies to assist alfalfa products producers and processors.

(Examples of such programs identified by the USTR) include programs that reduce fixed costs, programs that enhance revenues, and transportation assistance programs. When examining Canadian programs and policies, the Commission, as requested by the USTR, will give special attention to:

(a) Programs affecting transportation costs, including the Western Grain Transportation Act;

(b) Government-funded assistance for conversion of processing facilities, including the Western Economic Diversification Act;

(c) Tax rebates available to Canadian exporters of alfalfa products;

(d) Government-subsidized loans to Canadian alfalfa growers, processors, or exporters; and

(e) Other production, processing, transportation, and export assistance offered by Canada's national or Provincial Governments.

(4) An analysis of the competitive factors in the U.S. and Canadian industries, including a comparison by market regions wherever obtainable, of prices and production costs.

WRITTEN SUBMISSIONS: No public hearing is planned in this investigation. However, interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission should be received by the close of business on August 2, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired persons may obtain information on this study by contacting the Commission's TDD terminal on (202–252–1810).

By order of the Commission.

Issued: April 26, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10279 Filed 4–30–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–300]

Certain Doxorubicin and preparations containing same; Commission Decision To Terminate Remanded Investigation by Dismissing Complaint as Moot

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to terminate the above-captioned remanded investigation by dismissing the complaint as moot.

ADDRESSES: Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: Notice of institution of this investigation was published in the **Federal Register** on June 21, 1989. 54 FR (June 21, 1989). On October 9, 1990, the Commission terminated the investigation with a final determination of no violation of section 337. 55 FR 42077 (October 17, 1990). On motion of the Commission, complainants appeal was terminated for mootness by the United States Court of Appeals for the Federal Circuit because of the expiration of the involved patent. *Erbamount, Inc.* v. *U.S. International Trade Commission* (Appeal No. 91–1072, Orders of March 26 and April 9, 1991). The Federal Circuit vacated the Commission's final determination of October 9, 1990, and remanded the case to the Commission with directions to dismiss the complaint as moot.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the above-noted orders of the United States Court of Appeals for the Federal Circuit.

By order of the Commission.

Issued: April 22, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10257 Filed 4–30–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–327]

Certain Food Trays With Lockable Lids; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 27, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Inline Plastics Corporation, 40 Seemans Lane, P.O. Box 290, Milford, Connecticut 06460. Amendments to the complaint were filed on April 10 and April 15, 1991. The complaint, as amended, alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain food trays with lockable lids that infringe claims 1 through 8 of U.S. Letters Patent 4,576,330 and claims 1 through 12 of U.S. Letters Patent 4,771,934; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: James M. Gould, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1578.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on April 23, 1991, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain food trays with lockable lids, by reason of alleged direct infringement of claims 1 through 8 of U.S. Letters Patent 4,576,330 or claims 1 through 12 of U.S. Letters Patent 4,771,934; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Inline Plastics Corporation, 40 Seemans Lane, P.O. Box 290, Milford, Connecticut 06460.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Par-Pak, Ltd., 65 Duncan Road, Richmond Hill, Ontario, Canada L4C 6J4.

(c) James M. Gould, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d)

and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and the Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this Notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: April 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10528 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Preliminary)]

Fresh Kiwifruit From New Zealand; Institution and Scheduling of a Preliminary Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-516 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 10, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 F.R. 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-252-1183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 25, 1991, by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and Individual California Kiwifruit Growers, Sacramento, CA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 15, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jeff Doidge (202-252-1183) not later than May 10, 1991, to arrange for their appearance. Parties in support of the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submission

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 20, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 26, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10280 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-305 (Final) and 731-TA-476 and 478-482 (Final)]

Steel Wire Rope From Argentina, India, Mexico, The People's Republic of China, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-476 and 478-482 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, India, Mexico, the People's Republic of China, Taiwan and Thailand of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States.[1] the Commission also gives notice of the schedule to be followed in these antidumping investigations and the ongoing countervailing duty investigation regarding imports of steel wire rope from India (inv. No. 701-TA-305 (Final)), which the Commission instituted effective February 4, 1991 (56 FR 8217, February 27, 1991). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (56 FR 11406, March 18, 1991).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-252-1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of steel wire rope from Argentina, India, Mexico, the People's Republic of China, Taiwan and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation on February 4, 1991 (56 FR 8217, February 27, 1991). These investigations were requested in a petition filed on November 5, 1990, by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the Investigations and Public Service List

Any person have already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigations. Any other persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on June 25, 1991, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 9, 1991, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 1, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 2, 1991, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is July 5, 1991. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 17, 1991; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 17, 1991. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely

[1] The imported steel wire rope covered by these investigations consists of ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of brass plated wire. Such steel wire rope was previously provided for in items 642.14 and 642.16 of the former Tariff Schedules of the United States (TSUS)).

filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: April 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-10259 Filed 4-30-91; 8:45 am]

BILLING CODE 7020-02-M

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services to Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmwork clients in Arkansas. Pursuant to the Corporation's announcement of funding availability in Volume 6, No. 49, pages 10577 and 10578 of the **Federal Register** of March 13, 1991, a total of $49,140 will be awarded to Arkansas Legal Services.

This one-year grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 107(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on May 31, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Field Services, (202) 863-1837.

Date Issued: April 26, 1991.

Dated: April 26, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91-10282 Filed 4-30-91; 8:45 am]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission/NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 8, 1991 through April 19, 1991. The last biweekly notice was published on April 17, 1991 (56 FR 15637).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 31, 1991 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: February 26, 1991

Description of amendments request: In accordance with NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements," Alabama Power Company (APCO) has incorporated the Joseph M. Farley Nuclear Plant, Units 1 and 2, fire protection program into the Final Safety Analysis Report (FSAR). Based on the guidance provided in NRC Generic Letter 88-12, "Removal of Fire Protection Requirements from Technical Specifications," APCO has proposed changes to the fire protection license conditions and the fire protection portions of the Technical Specifications.

The proposed changes revise the fire protection license conditions 2.C.(4) for Unit 1 and 2.C.(8) for Unit 2 to provide consistency with the standard fire protection license condition contained in Generic Letter 86-10. The proposed changes also (1) delete Unit 1 and Unit 2 fire protection Technical Specifications 3/4.3.3.9, 3/4.7.11.1, 3/4.7.11.2, 3/4.7.11.3, 3/4.7.11.4, 3/4.7.11.5, 3/4.7.12 and associated bases; and (2) delete the minimum fire brigade staffing requirement, Technical Specification 6.2.2(e), for both Units 1 and 2, and revise the footnotes to delete reference to fire brigade staffing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Deletion of Technical Specifications 3/4.3.3.9, "Fire Detection Instrumentation"; 3/4.7.11.1, "Fire Suppression Water System"; 3/4.7.11.2, "Spray and/or Sprinkler Systems"; 3/4.7.11.3, "CO_2 Systems"; 3/4.7.11.4, "Fire Hose Stations"; 3/4.7.11.5, "Yard Fire Hydrants and Hydrant Hose Houses"; 3/4.7.12, "Fire Barrier Penetrations"; and associated bases:

a. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Technical Specification requirements to maintain the fire protection systems have been replaced with the requirements which appear in

Attachment C to Appendix 9B to the FSAR. The following changes to these Technical Specification requirements have been made to the requirements which appear in Attachment C to Appendix 9B to the FSAR.

* The special reporting requirement was deleted for inoperable fire protection equipment.

* The reference to Specifications 3.0.3 and 3.0.4 was deleted.

* The shutdown and startup requirements of Technical Specifications 3.0.3 and 3.0.4 which apply to Technical Specification 3/4.7.11.1, Action Statement b will be incorporated into plant procedures.

* The lists of fire detection instrumentation were updated to reflect Appendix R commitments.

* The requirement to provide an alternate backup pump or supply in the event that a backup pump or supply is not available was added.

* The requirement that each fire pump develop at least 2500 gpm at a system head of 125 psi was revised to specify at least 2500 gpm at a differential head of 125 psi.

* The lists of fire suppression systems were updated to reflect Appendix R commitments.

The operability and surveillance requirements will be maintained in the FSAR and plant procedures where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR and plant procedures without prior NRC approval. Changes to the fire protection program in the FSAR and plant procedures may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. Per Technical Specifications 6.5.1.6(b) and 6.5.1.7(a), the Plant Operations Review Committee (PORC) will continue to review safety evaluations prepared in accordance with the provisions of 10 CFR 50.59 for changes to the fire protection program implementation and recommend in writing approval or disapproval of such safety evaluations to the General Manager-Nuclear Plant. Additionally, Technical Specification 6.8.1(f) requires that written procedures be established, implemented and maintained covering the fire protection program implementation. These administrative controls will ensure that changes to the operability and surveillance requirements are performed in accordance with 10 CFR 50.59 and will not involve an increase in the probability or consequences of an accident or adversely affect the ability to achieve and maintain safe shutdown. Therefore, the deletion of Technical Specifications 3/4.3.3.9, 3/4.7.11.1, 3/4.7.11.2, 3/4.7.11.3, 3/4.7.11.4, 3/4.7.11.5 and 3/4.7.12 and the placement of the same operability and surveillance requirements into the FSAR and plant procedures will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirements to maintain operability of the detection instrumentation, the fire suppression water system, the spray and/or sprinkler systems, the CO_2 systems, the fire hose stations, the yard fire hydrants and hydrant hose houses, and the fire barrier penetrations and to perform surveillance requirements to ensure operability of these systems are retained; these requirements have simply been moved from the Technical Specifications to the FSAR. Plant procedures will be developed from the existing procedures that implement this Technical Specification to provide specific instructions for implementing the operability and surveillance requirements. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by these changes.

c. The proposed changes will not involve a significant reduction in the margin of safety because the operability and surveillance requirements will be maintained in the FSAR and plant procedures where changes must be evaluated in accordance with 10 CFR 50.59.

The provisions of 10 CFR 50.59 allow changes to be made to the FSAR and plant procedures without prior NRC approval. Changes to the fire protection program in the FSAR and plant procedures may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the administrative controls discussed in item (a) above will ensure that changes to these operability and surveillance requirements are performed in accordance with 10 CFR 50.59 and will not involve a reduction in a margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of these technical specifications and the placement of the same operability and surveillance requirements into the FSAR and plant procedures will not involve a significant reduction in the margin of safety.

2. Deletion of the Fire Brigade Minimum Staffing Requirement, Technical Specification 6.2.2(e):

a. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the Technical Specification requirements to maintain the Fire Brigade staffing will be replaced by the requirements which are discussed in detail in Appendix 9B to the FSAR. This administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. Per Technical Specifications 6.5.1.6(b) and 6.5.1.7(a), the PORC will continue to review safety evaluations prepared in accordance with the provisions of 10 CFR 50.59 for changes to the fire protection program implementation and recommend in writing approval or disapproval of such safety evaluations to the General Manager-Nuclear Plant. Additionally, Technical Specification 6.8.1(f) requires that written procedures be established, implemented and maintained covering the fire protection program implementation. These established administrative controls will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve an increase in the probability or consequences of an accident or adversely affect the ability to achieve and maintain safe shutdown. Therefore, the deletion of Technical Specification 6.2.2(e) and the placement of the same requirement into the FSAR will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirement to maintain minimum fire brigade staffing is retained; this requirement has simply been moved from the Technical Specifications to the FSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by this change.

c. The proposed change will not involve a significant reduction in the margin of safety because this administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the established administrative controls discussed in item (a) above will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve a reduction in the margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of this technical specification and the placement of the same operability and surveillance requirements into the FSAR will not involve a significant reduction in the margin of safety.

3. Revision of Minimum Staffing Requirements Footnote on Technical Specification Page 6-2:

a. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is an editorial clarification. The footnote provides an exception to the minimum staffing requirements for the fire brigade and the health physics technician. The exception to the minimum staffing requirements for the fire brigade has been replaced by the requirements which are discussed in Appendix 9B to the FSAR, along with the minimum fire brigade staffing requirements. The changes to the exception to the health physics technician staffing requirements (Footnote on Page 6-2) are necessary as a result of the removal of the fire brigade from the footnote. These changes are strictly editorial. Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requirement to maintain

minimum fire brigade staffing is retained; this requirement has simply been moved from the Technical Specifications to the FSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated will not be created by this change.

c. The proposed change will not involve a significant reduction in the margin of safety because this administrative control will be maintained in the FSAR where changes must be evaluated in accordance with 10 CFR 50.59. The provisions of 10 CFR 50.59 allow changes to be made to the FSAR without prior NRC approval. Changes to the fire protection program in the FSAR may be made only if the changes will not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Additionally, the established administrative controls discussed in item (a) above will ensure that changes to this requirement are performed in accordance with 10 CFR 50.59 and will not involve a reduction in the margin of safety or adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. Therefore, the deletion of this technical specification and the placement of the same operability and surveillance requirements into the FSAR will not involve a significant reduction in the margin of safety.

4. Revision of Unit 1 license condition 2.C.(4) and Unit 2 license condition 2.C.(6):

a. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing license conditions require all provisions of the approved fire protection program to be maintained in effect, and require that any changes which would decrease the effectiveness of the fire protection program receive prior Commission approval. The new license conditions also require all provisions of the approved fire protection program to be maintained in effect, and that changes to the fire protection program be made under the provisions of 10 CFR 50.59 only if the changes will not adversely affect the ability to achieve and maintain safe shutdown. The new license conditions simply change the criteria by which Alabama Power Company is authorized to make changes to the program without prior NRC approval. These new criteria preserve the ability to achieve and maintain safe shutdown of the plant in the event of a fire. The overall objective of the existing fire protection program and license conditions is to ensure safe shutdown of the plant in the event of a fire. Therefore, the new license conditions are consistent with the objective of the existing license conditions and NRC Generic Letter 86-10. Consequently, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The new license conditions will ensure that the ability to achieve and maintain safe shutdown in the event of a fire is preserved. Since these new license conditions are consistent with the objective of the old license conditions, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed changes will not involve a significant reduction in the margin of safety. All modifications identified in Tables 1, 2 and 3 of the NRC's Joseph M. Farley Safety Evaluation Report, Fire Protection Review, Unit Nos. 1 and 2 dated February 12, 1979 have been dispositioned, as required by the existing Unit 1 and Unit 2 license conditions. Administrative control changes and procedure revisions discussed in the February 12, 1979 SER have been completed and Commission approval of design modifications which would allow the reactor to be taken to cold shutdown without reliance on the cable spreading room or control room was obtained, as required by the existing Unit 1 license condition. Appendix 9B to the FSAR documents Alabama Power Company's compliance with the fire protection program set forth in Appendix R to 10 CFR Part 50 in accordance with the requirements of paragraph 50.48 of 10 CFR Part 50, which is required by the existing Unit 2 license condition. Therefore, all provisions of acceptance in the existing license conditions have been addressed and the adoption of the proposed new license conditions simply changes the criterion by which Alabama Power Company is authorized to make changes to the approved program. As discussed in a. above, the new license conditions are consistent with the objective of the existing license conditions. Accordingly, these proposed changes will not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendments meet the three standards in 10 CFR 50.92 and, therefore, involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302.

Attorney for licensee: Mr. James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Project Director: Anthony J. Mendiola, Acting

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: March 28, 1991, as supplemented on April 16, 1991.

Description of amendments request: The proposed amendments will make editorial changes and administrative corrections to the Licenses and Technical Specifications (TSs) for both Calvert Cliffs Units 1 and 2 (CC-1/2). The original TSs for CC-1/2 had many pages which were identical in content and annotated with both unit numbers. As changes have been made to the TSs, the annotations remain on pages which are not identical anymore. Many pages throughout the TSs are also double-sided. This situation has contributed to copying and amendment numbering problems. The proposed amendments were submitted in an effort to eliminate the administrative problems that both of these situations have created and to make several editorial changes. In addition, several administrative corrections have been identified and are included in the proposed amendments.

These amendments will make the following editorial changes throughout the Licenses and Technical Specifications for Units 1 and 2:

Make all pages Unit specific

Make all pages single-sided

Remove all intentionally blank pages

Renumber pages which are alpha-numeric

Place Defined Terms (Section 1.0) in alphabetical order

Capitalize the first letter of system names

Change the Index to the Table of Contents

Place numbers by the LCOs so they are consistent with the Table of Contents

Renumber the Figures and Tables so they are in numerical order and change references accordingly

Remove outdated footnotes

In addition to the editorial changes, the proposed amendments will make several corrections involving discrepancies in both sets of TSs. These were determined to be administrative in nature after being researched to ensure that they do not constitute a substantive change to the TSs. The requested corrections are briefly described below with detailed justification provided in the submittal requesting the amendments.

1.Table 2.2-1 (Units 1 & 2) Correct the typographical error which changed the units for the Thermal Margin/Low Pressure Allowable Value Limit from "psia" to "psig."

2.Bases 2.1.2 (Unit 1) Correct the typographical error which transposed the hydrotest pressure for the Reactor Coolant System from "3125 psia" to "3215 psia" in Bases 2.1.2.

3.Section 3/4.1.1.1 Reinsert the asterisk (*) that provide (Units 1 &2)application of the footnote in 3/

4.1.1.1 to each of the three references to "the limit line of Figure 3.1-1b."

4.Specification 4.1.1.1.1 Add the word "line" after limit in this (Unit 1) Surveillance Requirement.

5.Table 3.3-3 (Unit 2) Make a more complete entry for Auxiliary Feedwater Actuation System of Table 3.3-3.

6.Table 3.3-5 (Unit 2) Reinsert note (1) of Table 3.3-5 as referenced by item 4.a of the Table.

7 Table 3.3-6 (Units 1 & 2) Correct the typographical error which transposed the trip setpoint of the Containment Purge and Exhaust Isolation Area Radiation Monitor from 220 mr/hr to 200 mr/hr in Table 3.3-6.

8.Table 4.3-4 (Units 1 & 2) Make "Seismic Acceleration Recorder" the title of item 3.

9.Table 3.3-11 (Units 1 & 2) Correct transcription errors in Table 3.3-11. These include an incorrect room number, transposed detector numbers, and a duplicate listing.

10.Table 3.6-1 (Unit 2) Add the isolation times associated with Containment Isolation Valves for Penetration 1A in Table 3.6-1.

11.Specification 4.6.5.1Renumber the Surveillance Requirement (Units 1 & 2) 4.6.5.1 and 4.6.5.2 to 4.6.5.1.1 and 4.6.5.1.2.

12.Specification 3.7.1.1.a Reinsert the phrase "next 6 hours and in (Unit 1) COLD SHUTDOWN within the" into the last sentence of 3.7.1.1.a.

13.Section 3/4.7.8 (Unit 1) Correct references to Surveillance Requirements.

14.Specification 4.9.12.c Add the "1.52" to a reference to (Units 1 & 2) Regulatory Guide 1.52.

15.Section 3/4.12.1Restore the title "Monitoring Program" (Units 1 & 2) to LCO 3/4.12.1.

16.Bases 3/4.2.2, 3/4.2.3,Delete duplicate, incorrect Bases text. 3/4.2.4 (Unit 1)

17.Bases 3/4.7.1.6 Remove Bases for deleted LCO 3.7.1.6 and (Units 1 & 2) SR 4.7.1.6.

18.Specification 6.4.1Change Appendix "A" of 10 CFR Part 55 to (Units 1 & 2) 10 CFR 55.59(c).

19.Specification 6.5.2.2Add phrase "and shall collectively have (Unit 2) expertise in all of the areas of 6.5.2.1" to the last sentence of 6.5.2.2.

20.Specification 6.10.2Delete 6.10.2 Item 1, as it refers to (Units 1 & 2) requirements for Records of Environmental Qualification which no longer exist in Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes and corrections are editorial and administrative and do not constitute a substantive change to the Technical Specifications. Therefore, the changes and corrections do not involve a significant increase in the probability or consequence of an accident previously evaluated.

(2) Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed changes and corrections do not modify the plant's configuration or operation as they are editorial and administrative. As a result, no new accident initiators are introduced. Therefore, the changes and corrections do not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

As the proposed changes and corrections are editorial and administrative and do not constitute a substantive change to the Technical Specifications, the margin of safety is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: March 27, 1991

Description of amendments request: The proposed amendment would relocate certain cycle specific core operating limits from the Technical Specifications, to a Core Operating Limits Report (COLR). This request is in response to NRC Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specification."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the cycle-specific core operating limits from the Zion Station Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operation limits, although not in Technical Specifications, will be followed in the operation of the Zion Station. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. The cycle-specific limits within the COLR will be implemented and controlled per Zion procedures. Each accident analysis addressed in the Zion Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle dependent parameters, which are obtained from application of the NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analysis. This examination, which will be performed per the requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. Since this examination will be performed per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken, when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design methodologies and appropriate

actions to be taken, when or if limits are exceeded.

The development of the limits for future reloads will continue to conform to those methods described in the NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety. Since each future reload will involve a 10 CFR 50.59 safety review, no reduction (significant or insignificant) in a margin of safety will be allowed.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the Zion Station in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 1, 1991

Description of amendments request: The proposed change would add a new section to the Technical Specifications to provide an alternate method of controlling high radiation areas, in lieu of the requirements of 10 CFR 20.203(c)(2) and (4).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect the operations of plant systems. Since the proposed change affects administrative controls, accident initiators, accident assumptions, and off-site dose consequences will not be affected. This change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change affects administrative controls exercised to restrict access to high radiation areas by plant personnel and does not affect the operations of plant systems. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. The proposed changes do not represent a significant reduction in a margin of safety.

The proposed change is administrative in nature and does not alter the manner in which equipment required for safe operation of the plant is operated. There are no setpoint, or operational limitations being altered or changed as a result of these revisions. As such, these changes do not represent a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: March 22, 1991

Description of amendment request: The proposed amendment reflects the addition of another weld location on a feedwater line that is addressed in Table 4.0-1 of Technical Specification 4.0.6, "Augmented In-Service Inspection Program."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed Technical Specification change does not alter the inspection of high-energy break locations in accordance with the Augmented In-Service Inspection Program. This change simply adds an additional weld that will require the same inspections that are listed in Table 4.0-1, volumetric and visual examinations.

The feedwater and the auxiliary feedwater system parameters and performance are not affected by the volumetric or visual examinations of pipe welds. Therefore, the Technical Specification revision will not adversely affect the operability or reliability of the feedwater system at the Haddam Neck Plant.

No design basis accidents are affected by this change. Therefore, there is no impact on the probability of occurrence or the consequences of any design basis events. No safety systems are adversely affected by the change.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response to the point where it can be considered a new accident, and no new failure modes are introduced.

The proposed change specifies that an inspection be performed on a weld in the feedwater system. The inspection will help ensure the integrity of that weld and at the same time will in no way adversely affect the weld or the piping.

3. *Involve a significant reduction in margin of safety.*

This proposed change will not decrease the margin of safety. The Technical Specification directed Augmented In-Service Inspection Program is intended to maintain the margin of safety by monitoring weld integrity. Adding this additional inspection location is consistent with this purpose. Testing as specified contributes to rather than detracts from the margin of safety.

There are no adverse impacts on the protective boundaries, safety limits, or margins to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: April 12, 1991

Description of amendment request: The proposed amendment would reissue all pages of the Big Rock Point Technical Specifications (TS), correcting a number

of editorial errors, such as formatting and page numbering, which have occurred in the TS due to various causes. The accumulation of a great number of these minor errors has necessitated the reissuance of the entire text of the TS, as opposed to a number of corrected pages. The changes proposed by the licensee are all of an administrative nature and would not significantly change any of the existing TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) All of these proposed changes are administrative in nature. They do not involve modification to any existing equipment, systems, or components, and do not change any existing administrative controls or revise any limitations on existing equipment.

(2) These proposed changes correct editorial and typographical errors; correct errors made in prior amendments; and correct minor administrative differences involving format such as elimination of blank pages and changes to page numbering. These proposed changes, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(3) Because these changes do not involve any equipment modifications or revise any limitations on existing equipment, they also do not create the possibility of a new or different kind of accident previously evaluated nor do they involve a significant reduction in a margin of safety. Consequently, these proposed modifications do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 9, 1991

Description of amendment request: This amendment would modify the Technical Specifications (TS) to reflect fuel reloading for Catawba Unit 1's Cycle 6 operation with fuel manufactured by the B&W Fuel Company (BWFC Mark BW fuel assemblies). Cycle 6 operation would then be based on a mixed core containing 72 fuel assemblies of the Mark BW design and 121 of the Westinghouse OFA design. The TS would be modified to accommodate the influence of the Cycle 6 core design on power peaking, reactivity, and control rod worths in conjunction with changes in the reload analysis methodology. The changes in methodology have been or will be reviewed separately by the NRC staff in its review of numerous B&W and Duke Power Company (DPC) sponsored topical reports which are identified in the references for the amendment application.

The current TS will continue to be applicable to Unit 2. Therefore, separate sections of parts of the combined TS for the two units will be created for each unit. Specifically, the TS changes would include those to TS 2.1, Core Safety Limit, to reflect the changed critical heat flux correlation, the increased F (delta H) for Mark-BW fuel, reduced minimum reactor coolant system (RCS) flow; to TS 2.2.1, RTS Instrumentation Trip setpoints to reflect completion of the RTD bypass removal, reduced minimum measured RCS flow and increased error allowances on certain reactor trip instrumentation; to TS 3/4.2.1, Axial Flux Difference, to delete reference to baseload operation; to TS 3/4.2.2, Heat Flux Hot Channel Factor, to reflect the changed methodology for this parameter; to TS 3/4.2.3, Nuclear Enthalpy Rise Hot Channel Factor, to reflect the changed methodology for this parameter and the separation of the RCS flowrate from it; to TS 3/4.2.4, Quadrant Power Tilt Ratio, to reflect increase of the tilt ratio at which a power reduction is required and to rewrite the LCO to be consistent with the Westinghouse Standard Technical Specification; to TS 3/4.2.5, DNB parameters, to incorporate RCS flowrate as a DNB parameter, to remove the power/flow tradeoff dependance on thermal power and to reflect the reduced measured RCS flowrate; TS 4.5.2.h, ECCS subsystem operability, to change the requirements for flow and developed pressure to be consistent with the revised accident analysis flow assumptions; associated changes in the BASES for the TS discussed above; and changes to the Reporting Requirements of TS 6.9.1.9 to reflect the changes to the BWFC operating limit methodology that must be included in the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination:

I. SAFETY LIMITS (TS 2.1, 2.2) AND POWER DISTRIBUTION (TS 3/4.2.1, 3/4.2 2, 3/4.2.3, 3/4.2.4, and 3/4.2.5)

The fuel for Catawba Nuclear Station Cycles 1-5, for both Units 1 and 2, is Westinghouse supplied. The fuel for at least Cycles 6-9 of Catawba Unit 1 will be supplied by B&W Fuel Company. The Catawba Unit 1, Cycle 6 Reload Safety Evaluation Report attached to the TS amendment application demonstrates that the core reload using Mark-BW fuel will not adversely impact the safety of the plant. Methods and models have been developed to support Catawba Unit 1 operation during both normal and off normal operation. These methods and models ensure safe operation with an entire core of Mark-BW fuel and with a core of mixed Westinghouse and Mark-BW fuel. The analysis methods are documented in Topical Reports which are identified in the amendment application.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

For the reload-related Technical Specifications the probability or consequences of an accident previously evaluated is not significantly increased.

A LOCA evaluation for operation of Catawba Nuclear Station with Mark-BW fuel has been completed (BAW 10174, Mark-BW Reload LOCA Analysis for the Catawba and McGuire Units). Operation of the station while in transition from Westinghouse supplied OFA fuel to B&W supplied Mark-BW fuel is also justified in this topical.

BAW 10174 demonstrates that Catawba Nuclear Station continues to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel.

Large Break LOCA calculations completed consistent with an approved evaluation model (BAW 10168P and revisions) demonstrate compliance with 10 CFR 50.46 for breaks up to and including the double ended severance of the largest primary coolant pipe. The small break LOCA calculations used to license the plant during previous fuel cycles are shown to be bounding with respect to the new fuel design. This demonstrates that the plant meets 10 CFR 50.46 criteria when the core is loaded with Mark-BW fuel.

During the transition from Westinghouse OFA fuel to Mark-BW fuel, both types of fuel assemblies will reside in the core for several fuel cycles. Appendix A to BAW-10174 demonstrates that results presented above apply to the Mark-BW fuel in the transition core, and that insertion of the Mark-BW fuel will not have an adverse impact on the cooling of the Westinghouse fuel assemblies.

BAW 10173P, Mark-BW Reload Safety Analysis for the Catawba and McGuire Units, provides evaluations and analyses for non-LOCA transients which are applicable to

Catawba. The scope of BAW 10173P includes all events specified by sections 15.1-15.6 of Regulatory Guide 1.70 (Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants) and presented in the Final Safety Analysis Report for Catawba. The analysis and evaluations performed for BAW 10173P confirm that operation for Catawba Nuclear Station for reload cycles with Mark-BW fuel will continue to be within the previously reviewed and licensed safety limits.

One of the primary objectives of the Mark-BW replacement fuel is compatibility with the resident Westinghouse fuel assemblies. The description of the Mark-BW fuel design, and the thermal-hydraulics and core physics performance evaluation demonstrate the similarity between the reload fuel and the resident fuel. The extensive testing and analysis summarized in BAW 10173P shows that the Mark-BW fuel design performs, from the standpoint of neutronics and thermal-hydraulics, within the bounds and limiting design criteria applied to resident Westinghouse fuel for the Catawba plant safety analysis.

Each FSAR accident has been evaluated to determine the effects of Cycle 6 operation and to ensure that the radiological consequences of hypothetical accidents are within applicable regulatory guidelines, and do not adversely affect the health and safety of the public. The design basis LOCA evaluations assessed the radiological impact of differences between the Mark-BW fuel and Westinghouse OFA fuel fission product core inventories. Also, the dose calculation effects from non-LOCA transients reanalyzed by BWFC utilizing Cycle 6 characteristics were evaluated.

Differences in the current FSAR dose values that are not related to the insertion of Mark-BW fuel reflect the application of the latest revisions to Standard Review Plan dose assessment methodology. The calculated radiological consequences are all within specified regulatory guidelines and contain significant levels of margin.

The analyses contained in the referenced Topical Reports indicate that the existing design criteria will continue to be met. Therefore, these TS changes will not increase the probability or consequences of an accident previously evaluated.

As stated in the above discussion, normal operational conditions and all fuel-related transients have been evaluated for the use of Mark-BW fuel at Catawba Nuclear Station. Testing and analysis were also completed to ensure that from the standpoint of neutronics and thermal-hydraulics the Mark-BW fuel would perform within the limiting design criteria. Because the Mark-BW fuel performs within the previously licensed safety limits, the possibility of a new or different accident from any previously evaluated is not created.

The safety analyses performed in support of any reload necessarily involve the assumption of a number of input parameter values. Because of the differences in methodologies between vendors, and the proprietary nature of the analyses, a side-by-side comparison of input assumptions is generally neither possible nor useful. Reactor Coolant System flow is an exception, because it is a TS constrained and measurable value. The B&W analyses referenced in the above discussion assumed an RCS flow of 385,000 gpm. TS have been changed to reflect this new value (in Table 2.2-1, footnote, loop minimum measured flow = 96,250 gpm, and Figure 3.2-1, Rated Thermal Power vs. Flow). The change also affects Figure 2.1-1, Reactor Core Safety Limits. Because the new safety limits continue to provide assurance that DNB, and hot leg boiling will not occur, this change does not represent a significant decrease in the margin of safety.

The reload-related changes to the TS do not involve a significant reduction in the margin of safety. The calculations and evaluations documented in BAW 10174 show that Catawba will continue to meet the criteria of 10 CFR 50.46 when operated with Mark-BW fuel. The evaluation of non-LOCA transients documented in BAW-10173P also confirms that Catawba will continue to operate within previously reviewed and licensed safety limits. Because of this, the TS changes to support the use of Mark-BW fuel will not involve a significant reduction in the margin of safety.

Several changes have been made to Table 2.2-1. These changes reflect updated plant specific instrument uncertainty calculations. The allowable values for both the power range neutron flux high setpoint and the low RCS flow trips are conservatively being made more restrictive as a result of this error calculation. The S and Z terms are used to determine the operability of a channel if the trip setpoint exceeds its allowable value. The modification to the S and Z values for high pressurizer pressure permit a larger rack drift before the channel must be declared inoperable. The changes to the S and Z values for the high and low neutron flux trips conservatively restrict the rack drift.

The changes to Table 2.2-1 will not significantly increase the probability or consequences of an accident previously evaluated. The changes to the allowable values for the power range neutron flux (high setpoint) and low RCS flow, and the S and Z values for power range neutron flux (both setpoints), are conservative. The modification to the Z value permits a larger rack drift for pressurizer pressure, low RCS flow, and overtemperature delta-T before the channel becomes inoperable, however, these changes more accurately represent expected values, and are within the safety analysis assumptions. For similar reasons, it can be concluded that these changes will not create the possibility of any new accident from those previously evaluated. It can also be concluded that since all new TS values are bounded by safety analysis assumptions that this change will not significantly decrease the margin of safety.

Several of the requested amendments are administrative in nature. The requested change which updated Table 2.2-1 for deletion of the RTD Bypass System, reflects a change which has been previously approved by the NRC (Amendment No. 40 to Facility Operating License NPF-35 and Amendment No. 33 to Facility Operating License NPF-52). Since the needed modifications have been completed on both Catawba Units 1 and 2 the TSs which no longer apply are being deleted. Since there is no change in requirements this change does not involve significant hazards considerations.

An administrative change has been requested for TS 3.2.4 to delete "above 50% of RATED THERMAL POWER" from the LCO, and add it to the Applicability section. A statement that "The provisions of 3.0.4 are not applicable" was also added which would clarify that the surveillance requirement would be completed above 50% RATED THERMAL POWER. This change is consistent with both the Westinghouse Standard Technical Specifications and the way the plant is currently operated. Since there is no change to the current requirements this change is administrative in nature, and involves no significant hazards considerations.

An administrative change is being made to the TS which apply to Unit 2, and no longer apply to Unit 1 after the reload. The current Figure 2.1-1 has been relabeled as applicable to Unit 2 only. Table 2.2-1 also notes that the existing Reactor Coolant flow applies only to Unit 2 and the new Reactor Coolant flow (96,250) applies to Unit 1. The Applicability Section of the Power Distribution TS (3/4.2.1, 3/4.2.2, 3/4.2.3, 3/4.2.4) have also been revised to show that the existing TS still apply to Unit 2. The existing TS will be copied on yellow paper to further distinguish them from the new TS which apply to Unit 1 only. The Power Distribution TS will have an "A" in the page number for Unit 1 and a "B" for Unit 2, the pages will also be marked "Unit 1" or "Unit 2". This change is administrative only, and is being made to distinguish between the TS for Unit 1, which will be operated with TS revisions which reflect the use of Mark-BW fuel, and Unit 2 which will continue to operate with Westinghouse supplied fuel.

II. EMERGENCY CORE COOLING SYSTEMS (TS 3/4.5)

The proposed changes to TS 3/4.5 (Emergency Core Cooling Systems) consist of an administrative change to remove TS related to the Upper Head Injection System and revisions to the required flowrates for the centrifugal charging pumps and safety injection pumps.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no siginficant hazards consideration which is presented below:

The proposed revisions to the required flowrates for the centrifugal charging pumps and safety injection pumps do not involve a significant increase in the probability or consequences of an accident previously evaluated. The new pump flowrates represent a change in the assumptions made in the LOCA analysis, not a physical change in the plant. The increase in the required centrifugal charging pump flows is small, and both Catawba Units currently meet the new requirement. The required flowrate for the safety injection pumps has been lowered to allow for instrument uncertainty and to allow for a reasonable tolerance in the acceptance criteria for injected flow imbalance between the four injection lines. Lowering the safety

injection pump flows will be acceptable with respect to the existing LOCA analysis, because as discussed above there is excess flow available from the centrifugal charging pumps. Since a total ECCS flow value is assumed in the LOCA analysis, lowering the required flow for the safety injection pumps is acceptable for the current LOCA analysis, as long as the total ECCS flow assumed in the LOCA analysis remains available. Because the new TS requirements are consistent with both the new and the existing LOCA analyses, neither the probability or the consequences of an accident previously evaluated will be significantly increased.

The proposed Technical Specifications meet the criteria of both the new and the existing LOCA analysis. No changes have been made in the plant, and both Catawba units are currently operating within the proposed TS. Since a total ECCS flow is assumed in the LOCA analysis increasing the required centrifugal charging pump flow to account for a decrease in required safety injection flow insures that the existing LOCA analysis remains valid with the new TS requirements. Because the new TS values ensure that both the new and existing LOCA analysis remain valid, this change will not create the possibility of a new or different accident from any previously evaluated.

The LOCA analysis assumes a minimum ECCS flow. Both the new and the existing LOCA analyses remain valid with the proposed TS changes. Because the LOCA analysis remains valid, this change will not involve a significant reduction in the margin of safety.

The following changes are administrative in nature. The deletion of Specifications in Section 3/4.5.1 which require the UHI System to be operable in the applicability, and 3.5.1.2 which is marked in the TS to be deleted when UHI is physically disconnected from the Reactor Coolant System, also reflects a change which was previously approved by the NRC (Amendment No. 32 to Facility Operating License NPF-35 and No. 23 to Facility Operating License NPF-52). Since the needed modifications have been completed on both Catawba Units 1 and 2, the TSs which no longer apply are being deleted. Another adminstrative change is changing "pressurizer" pressure to "Reactor Coolant System" pressure in ACTION C.1, C.2, and C.3 to TS 3.5.1.1.2. This change is administrative because it reflects the instrument used by the plant to complete the required ACTIONS. Since Pressurizer pressure goes off scale low at 1700 psig, it cannot be used to measure pressure below 1000 psig as stated in the current TS. Since there is no change in requirements, this change does not involve significant hazards considerations.

III. REPORTING REQUIREMENTS (TS 6.9.1.9)

There has been an administrative change proposed to TS 6.9.1.9, Core Operating Limits Report (COLR) to reflect the use of BWFC methodology and analyses. Notes on Attachment 1 for Specification 6.9.1.9 are added to provide clarifications. The BWFC references added as Attachment 2 to TS 6.9.1.9 reflect the use of BWFC methodology to determine the cycle specific limits in the COLR.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

This change is administrative in nature, reflecting the use of NRC approved methodology to determine the operating limits in the COLR. The use of BWFC methodology and analysis has been previously justified in this submittal. The administrative change to the references for the COLR will not increase the probability or consequences of an accident previously evaluated. For the above reasons, it can also be concluded that this change will not create the possibility of a new or different accident from any previously evaluated.

The use of BWFC methodology and analyses have been previously determined to be acceptable by the NRC, and their use to determine the operating limits for Catawba, Unit 1, Cycle 6, is previously justified in this submittal. Because this change is administrative, simply listing the methodologies already determined to be acceptable, it does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis as discussed in Sections I, II and III above, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: February 05, 1991

Description of amendment request: The amendment would make schedular changes to conditions numbered 2.c(12)(a) for Unit 1 and 2.c(8)(a) for Unit 2 to allow several additional fuel cycles for the generic resolution of the cold leg accumulator pressure and level instrumentation issue. This would allow the NRC staff's generic review of the need for environmentally qualified category 2 instrumentation to monitor accumulator tank level and pressure to be completed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment would not involve a significant increase in the probability of an accident previously evaluated because the accumulator level and pressure are provided for preaccident monitoring of the status of the cold-leg accumulators and as such have no effect on cause mechanisms.

The proposed amendment would not create the possibility of a new or different kind of accident than previously evaluated since the design and operation of the unit will not be affected.

The proposed amendment would not cause a significant reduction in a margin of safety. The extension of time in which to resolve the accumulator instrumentation issue would have no impact on safety margins since the instrumentation is fully qualified for its intended function of preaccident monitoring of the cold-leg accumulators.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 02, 1991

Description of amendment request: The proposed amendment would change the visual inspection requirements for snubbers in Technical Specification 4.7.8 in response to the guidance provided in the NRC's Generic Letter 90-09 'Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The licensee states that the proposed changes would replace the current snubber visual inspection schedule with a new snubber visual inspection schedule and would revise the visual inspection acceptance criteria to mirror the visual inspection acceptance criteria contained in the generic letter.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The accident analyses are therefore unaffected by this proposal.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the confidence level in the number of snubbers available has not been changed.

The proposed amendment does not involve a significant reduction in a margin of safety. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The margin of safety is therefore unaffected by this proposal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 11, 1991

Description of amendment request: The proposed amendment would revise the value for the containment free volume (CFV) specified in Technical Specification (TS) 5.2.1 and associated bases. The proposed change identifies a CFV based on the as-built drawings instead of the preliminary estimate made prior to the completion of the Oconee Nuclear Station. This change is also reflected in Section 3.8.1.1 and Table 15.16 of the Oconee Final Safety Analysis Report (FSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed within the Oconee FSAR has been examined with respect to changes proposed within this amendment request. The change in CFV is not considered to be an initiator of any event discussed within Chapter 15 of the FSAR.

Accordingly, the probability of an accident previously evaluated occurring is not impacted. As discussed in Attachment 3, the proposed change which would revise the value for the CFV based on the as-built drawings would result in a slight increase in the reactor building pressure for the worst postulated LOCA analyzed in the Oconee FSAR. However, this would not significantly affect the probability or consequences of any accident previously evaluated since the building design pressure is still not reached for the worst LOCA analysis.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The CFV value is not considered to be an initiator for accidents or other types of events. Thus, operation of Oconee in accordance with this proposed Technical Specification will not create any failure modes not bounded by previously evaluated accidents. As such, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Use of the modified specifications would not involve a significant reduction in a margin of safety.

The proposed amendment to revise the current value for the CFV in Technical Specification 5.2.1 to a more accurate value based on the as-built drawings does not reduce any margin of safety. The design limits for peak pressure and temperature are not challenged by this change. No other margin of safety is affected by this change and all safety functions required to mitigate the consequences of the worst analyzed LOCA case are unaffected.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: February 28, 1991

Description of amendment request: The proposed amendment would revise the Appendix A Technical Specification Surveillance Requirement 4.7.1.5 by deleting the requirement for periodic part-stroke testing of each main-steam isolation valve (MSIV) and by deleting reference to specific testing requirements. These would be replaced by the requirement to verify the full closure of each MSIV within 5 seconds when tested in accordance with the requirements of Specification 4.0.5 (which references Section XI of the ASME Boiler and Pressure Vessel Code). The modified surveillance requirement would be in accordance with the Standard Technical Specifications for Westinghouse pressurized water reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely eliminate the requirement to part-stroke exercise the MSIVs periodically and other requirements that are redundant. The proposed change retains the requirement to demonstrate operability of the MSIVs periodically through full closure of the MSIVs within 5 seconds, but replaces the specified testing conditions with reference to Surveillance Requirement 4.0.5 (which references the ASME Code). The changes do not affect the operation or function of the MSIVs, do not involve any physical modification to the facility, and do not affect the manner by which the facility is operated.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely change the surveillance requirements for the MSIVs.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the

manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania Date of amendment request: February 20, 1991

Description of amendment request: The proposed amendment would modify the Appendix A Technical Specifications for determining containment leakage. Specifically, the amendment would modify surveillance requirement (TS 4.6.1.2) to delete the reference to ANSI N45.4 - 1972.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes prescribe the containment leakage rate be determined in accordance with Appendix J of 10 CFR 50. Appendix J of 10 CFR 50 includes both ANSI N45.4 - 1972 and alternate method ANSI/ANS 56.8 -1987 for determining containment leakage rates.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because neither plant configuration nor the manner by which the facility is operated would be affected. The proposed changes merely modify the Technical Specification to conform with Appendix J of 10 CFR 50.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the same containment integrity and leaktightness assumed for the original design would still be assured.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 25, 1991

Description of amendment request: The proposed change to the Arkansas Nuclear One, Unit 2 Technical Specification 3/4.1.1.3 would reduce the required minimum flow rate of reactor coolant through the reactor coolant system from greater than or equal to 3000 gpm to greater that or equal to 2000 gpm. Additionally, a proposed change to the bases for this specification is included to change the flow rate from 3000 gpm to 2000 gpm and the number of cubic feet of reactor coolant circulated in 25 minutes from 9,975 to 6,650. Also being proposed is the change from "low pressure safety injection pump" to "low pressure safety injection pump or containment spray pump as shutdown cooling pump."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The RCS [reactor coolant system] flow rate affects the amount of reactor coolant circulating through the core during Mode 5 operations. This flow rate determines the amount of mixing which occurs in the RCS during a postulated boron dilution event. The boron dilution event analysis are well understood, and adequate mixing is provided by any flow rate which is significantly larger than the dilution flow, which is analyzed to be 132 gpm from all three charging pumps. In fact the specific RCS flow is not an input parameter to these analyses. The proposed 2000 gpm minimum flow from either the low pressure safety injection pump or containment spray pump will continue to provide adequate RCS mixing and will maintain the acceptance criteria of the present analyses. The 2000 gpm minimum flow is adequate to prevent premature pump failure. Therefore this change does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New of Different Kind of Accident from any Previously Evaluated.

The reduced flow rate has been evaluated and found acceptable for the SDC [shutdown cooling] pump minimum continuous flow requirements, therefore no possibility of a different kind of accident related to equipment failure is created. The reduced flow requirement from either shutdown cooling pump provides sufficient flow for core cooling during Mode 5 operations, therefore this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The NRC evaluated various improvements in equipment and procedures relating to SDC operation from a balanced risk perspective during preparation of Generic Letter 88-17. It was identified that during certain plant conditions, i.e. reduced inventory, the potential for vortexing in the SDC suction drop line was increased significantly at higher RCS flow rates. This has been verified by ANO's own vortexing test during the 2R7 Refueling Outage. When the cooling requirements are met with either shutdown cooling pump, as in the proposed change, a reduction in the required flow rate has been determined to significantly improve the margin to safety with respect to potential loss of DHR [decay heat removal] events.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 14, 1990

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Tables 2.2-1, 3.3-1, and 4.3-1 and Bases 2.2.1 regarding reactor trip system instrumentation requirements to delete the Negative Flux Rate Trip (NFRT) function.

Basis for proposed no significant hazards consideration determination: On October 23, 1989, the Commission accepted Westinghouse report WCAP-11394-P-A (proprietary) and WCAP-11395-A (Non-proprietary), "Methodology for the Analysis of the Dropped Rod Event." To support deletion of the NFRT function at Vogtle, Westinghouse has performed plant specific evaluations using this methodology to demonstrate that the Departure from Nucleate Boiling (DNB) design basis is met during the transient associated with the dropping of one or more dropped rods with no credit taken for any actuation of power reduction features. The licensee has also evaluated the impact of the change upon other non-LOCA transients, including steam generator tube rupture; LOCA and LOCA-related conditions; fluid systems; containment integrity; and systems interaction.

As required by 10 CFR 50.91(a) and based on the above evaluations, the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Elimination of the NFRT function will be implemented such that no new performance requirements will be imposed on any system or component; therefore, no design criteria will be exceeded. Since the NFRT function is not an initiator for any of the postulated accidents analyzed in the FSAR, removal of the NFRT will have no effect on the probability of occurrence of any accident. With respect to the LOCA accidents, the mass/energy analyses are unaffected by the elimination of the NFRT function. The evaluations and analyses to determine the effects of removing the NFRT function on the non-LOCA transients have shown that the design basis conclusions are met. As such, the conclusions presented in the FSAR remain valid such that no increase in radiological consequences will occur. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety. The evaluation for elimination of the NFRT function has taken into account the applicable TSs and has bounded the conditions under which the TSs permit safe plant operation. The DNB design criteria and all acceptable LOCA and non-LOCA safety analysis acceptance criteria continue to be met. All other safety analysis assumptions remain valid. Therefore, the safety analysis results as presented in the FSAR remain bounding. In addition, deletion of the NFRT function will enhance plant safety by eliminating unnecessary automatic reactor trips and resulting challenges to safety systems.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425 Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 20, 1990

Description of amendment request: Technical Specification (TS) 3.4.1.3 prohibits the starting of a reactor coolant pump (RCP) with the reactor coolant system (RCS) in Hot Shutdown (Mode 4) unless the secondary water temperature of each steam generator is less than 50 degrees F above each of the RCS cold leg temperatures. The proposed amendments would supplement this TS requirement by adding that, with no reactor coolant pump running, this value of 50 degrees F is reduced to 25 degrees F at an RCS temperature of 350 degrees F and varies linearly to 50 degrees F at an RCS temperature of 200 degrees F.

Corresponding TS Bases discussing the 50 degrees F value would also be supplemented accordingly. Bases 3/4.4.1, Reactor Coolant Loops and Coolant Circulation, would reflect that in Mode 4 the starting of a RCP, when no other RCP is operating, is restricted to a range of temperatures that are consistent with analysis assumptions used to demonstrate that the residual heat removal (RHR) design pressure is not exceeded when RHR relief valves are used for RCS overpressure protection. Bases 3/4.4.9, Cold Overpressure Protection Systems, would reflect that additional temperature limitations are placed on the starting of a RCP to ensure that the RHR system remains within ASME design limits when the RHR relief valves are used to prevent RCS overpressurization.

Basis for proposed no significant hazards consideration determination: The licensee has recently discovered that the existing TSs are not sufficient to prevent overpressurization of the RHR system in Mode 4 with the RCS water solid when heat is transferred from the secondary to the primary system due to starting the first RCP. The deficiency occurred because the existing TS is based on analyses for the Cold Overpressure Mitigation System (COMS), but the design basis assumptions used to design the COMS included events that were not included in the analysis used to size the RHR relief valves for protection of the RHR pressure boundary. The proposed TS change would correct this deficiency by prohibiting starting of an idle RCP with the combination of temperatures that could result in exceeding the RHR design pressure during the time when COMS protection is being provided by the power operated relief valves and only one RHR relief valve is available.

Accordingly, the change constitutes an additional limitation, restriction or control not presently included in the TSs.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change to the TS will not result in a significant increase in the probability of an accident previously evaluated because it does not alter the functional requirements of any piece of equipment. It adds an additional restriction for starting of an idle RCP when no other RCP is operating. The change will expand the TS to cover the analysis assumptions for demonstrating that the RHR pressure limits are met.

This change to the TS will not introduce the possibility of a new or different kind of accident from any accident previously evaluated because it does not affect the causes of overpressurization events. It recognizes the need for consistency between the COMS analysis for RCS overpressurization and the design basis for prevention of overpressurization of the RHR system. It expands the TS to be consistent with a set of analysis assumptions that include an unlikely combination of operating conditions.

This revision to the TS will not result in a significant reduction in the margin of safety because it assures that the plant will continue to be operated within the parameters used for analyses that demonstrate that the RHR system pressure limits will not be exceeded. These limits are slightly more conservative than those currently allowed to prevent overpressurization of the RCS.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library,

412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, 1991

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) to provide for a long-term fuel management strategy based upon the use of reload fuel assemblies of a different design. Specifically, future reloads would be with Westinghouse VANTAGE-5 fuel assemblies, a modification of the current Westinghouse 17X17 low-parasitic (LOPAR) fuel assemblies. VANTAGE-5 fuel design features include smaller diameter fuel rods, mid-span Zircaloy grids, intermediate flow mixer (IFM) grids, natural uranium oxide axial blankets, integral fuel burnable absorbers, extended fuel burnup, and reconstitutable top nozzles. The new fuel management strategy would implement high energy 18-month fuel cycles with high capacity factors and low leakage loading patterns, and would extend discharged fuel burnup to support lead rod exposures up to 60,000 MWD/MTU. Operating characteristics and limits for the new fuel would be based upon analyses performed by Westinghouse with new computer codes and methodologies previously approved by the Commission's staff (or presently near completion of review by the Commission's staff). These new codes and methodologies include BART/BASH (used for large-break LOCA), NOTRUMP (for small-break LOCA), an improved thermal-hydraulics computer code called THINC-IV (for non-LOCA transients), a revised thermal design procedure (RTDP), a DNB correlation known as WRB-2, and a relaxed axial offset control (RAOC) strategy. Margins gained from the design features of the new fuel and from the use of new computer codes and methodologies would also be applied to changes in plant parameters such as pressurizer pressure (the P-11 setpoint) and accumulator water level range to provide increased operational flexibility.

The transition from LOPAR to VANTAGE-5 fuel would be made by replacing about one-third of the core during sucessive refueling outages, beginning with the outage to reload Cycle 4 into Vogtle Unit 1 (about September 1991). Vogtle Unit 2 would begin the transition with its Cycle 3 (about February 1992). Accordingly, the proposed amendments would contain appropriate TS change pages to be applied during the transition to a core fully loaded with VANTAGE-5 fuel.

The proposed TS revisions can be grouped into the following different changes:

1. REACTOR CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION SETPOINTS, AND DNB PARAMETERS

These changes would provide for higher design peaking factors ($F_{Delta-H}$), fuel rod bow, thimble plug deletion, transition core DNBR penalty, and wider axial offsets at rated thermal power associated with RAOC:

A. TS Figure 2.1-1 - The Reactor Core Safety Limit Lines would be revised based upon use of the revised DNB methods.

B. TS Table 2.2-1 - The revised reactor core safety limit lines provide for changes in the Overtemperature Delta-T and Overpower Delta-T Reactor Trip System Instrumentation Setpoints. Specifically, changes would be made to the total allowance, Z value, sensor error, K_1, K_2, K_3, K_4, K_5, nominal T_{avg}, and the f_1 (Delta-I) function.

C. TS Bases 2.1.1, 3/4.2, 3/4.2.2, 3/4.2.3, 3/4.2.5, and 3/4.4.1 - Changes in the Bases would reflect the use of the revised methods and correlations. TS Bases 3/4.2.5 would also add that the measurement uncertainty of RCS flow includes an allowance of 0.1% to account for feedwater venturi fouling.

D. TS 3/4.2.5 - Changes would be made in the limiting values of Reactor Coolant System T_{avg}, Pressurizer Pressure, and Reactor Coolant System Flow, and flow measurement uncertainty.

2. AXIAL FLUX DIFFERENCE AND PEAKING FACTOR SURVEILLANCE

TS 3/4.2.1 for Axial Flux Difference would be revised to reflect use of RAOC methodology. Since RAOC allows direct surveillance of the heat flux hot channel factor, F_Q, the surveillance requirements of TS 3/4.2.2 would be revised to reflect appropriate F_Q surveillance requirements. Additionally, in Action A of TS 3.2.2 the phrase 'Overpower Delta-T Trip Setpoints have been reduced at least 1%' would be clarified to read 'Overpower Delta-T Trip Setpoints (Value of K_4) have been reduced at least 1% (in Delta-T span)'. TS 6.8.1.6 would be revised to reflect use of RAOC methodology by substituting reference to WCAP-10216-P-A in lieu of the present reference for axial offset control.

3. INCREASE IN SHUTDOWN AND CONTROL ROD DROP TIME

TS 3/4.1.3.4 would be changed to reflect an allowable shutdown and control rod drop time of 2.7 seconds instead of the present 2.2 seconds. This change accounts for the slower drop time expected with VANTAGE-5 fuel because of the higher pressure drop due to its IFM grids and smaller guide thimble diameter.

4. WIDENED ACCUMULATOR WATER LEVEL RANGE

TS 3.5.1 would be changed to widen the limiting condition for operation defined for the range of water volume within the ECCS accumulators. The range would be changed from a minimum of 36% span (6616 gallons) to a minimun of 29.2% span (6555 gallons) and from a maximum of 64% span (6854 gallons) to a maximum of 70.7% span (6909 gallons).

5. P-11 SETPOINT

TS Table 3.3-3 specifies a P-11 setpoint of 1970 psig and an allowable value of 1980 psig. The P-11 setpoint would be changed to 2000 psig with an allowable value of 2010 psig. In addition to the above changes, the licensee proposed changes to reduce the minimum solution temperature of the refueling water storage tank and the associated surveillance limit. The licensee also proposed changes associated with the removal of the resistance temperature detector bypass manifold. These proposed changes are outside the scope of this notice.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. REACTOR CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION SETPOINTS AND DNB PARAMETERS

The proposed safety limits, reactor trip setpoints, and DNB-related parameters TS changes do not increase the probability or consequences of an accident previously evaluated in the FSAR. The core safety limits, trip setpoints and DNB parameters were determined using NRC reviewed and approved DNB methodologies; namely RTDP, improved THINC-IV model and the WRB-1 and WRB-2 DNB correlations. No new performance requirements are being imposed on any system or component in order to support the revised DNBR analysis assumptions. Overall plant integrity is not reduced. The DNBR design criterion continues to be met. None of these changes

offset parameters that could directly initiate an accident, therefore the probability of an accident has not increased. The acceptance criteria for the analyses reperformed with these revised DNB parameters continue to be met, therefore the of accidents previously evaluated in the FSAR are not significantly changed.

The proposed safety limits, reactor trip setpoints, and DNB-related parameters TS changes do not create the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed TS changes have no adverse effects and do not challenge the performance or integrity of any safety related system. The DNBR design criterion continues to be met. Therefore, the possibility of a new or different kind of accident is not created.

The proposed TS changes do not involve a significant reduction in a margin of safety. The change in the DNBR design limits are associated with the use of NRC approved methodologies (RTDP, the NRC reviewed WRB-1 and WRB-2 DNB correlations and the NRC reviewed improved THINC-IV model). In addition, the VANTAGE-5 fuel design, including IFM grids, assumes use of the WRB-2 correlation and has been generically approved by the NRC. The DNB design criterion (i.e., that there is at least a 95% probability at a 95% confidence level that DNB will not occur on the most limiting rod for any Condition I or II event) remains unchanged even with the changes in DNBR design limit values. Therefore, the new DNBR design limit values associated with the DNB methodology and correlation changes, upon which the TS changes are based, do not result in a reduction in the margin of safety because the DNB design criterion continues to be met.

2. AXIAL FLUX DIFFERENCE AND PEAKING FACTOR SURVEILLANCE

The use of RAOC and F_Q surveillance does not increase the probability or consequences of an accident previously evaluated in the FSAR. The TS changes do not result in any physical changes in the plant or any other changes that could initiate an accident. The accidents previously evaluated in the FSAR have been reevaluated and the results indicate that the consequences have not significantly increased. The results of these analyses are presented in Enclosure 4 and Appendices A and B [of the licensee's letter of November 29, 1990].

The use of RAOC and F_Q surveillance does not introduce the possibility of a new or different kind of accident than any previously evaluated in the FSAR. The operating limitations remain consistent with the analyses. The changes in the TSs do not result in the introduction of a new accident scenario, failure mechanism or limiting single failure.

The margin of safety provided by the TSs will not change significantly due to the use of the RAOC methodology and F_Q surveillance. This has been demonstrated by the reanalysis of transients and accidents presented in Enclosure 4 and Appendices A and B. The use of F_Q surveillance instead of F_{xy} provides a more direct method of demonstrating compliance with the Limiting Condition for Operation. The combination of RAOC and F_Q surveillance will continue to demonstrate that operation will remain within the constraints of the axial flux difference limits and will not result in total peaking factors that exceed the limit.

3. INCREASE IN SHUTDOWN AND CONTROL ROD DROP TIME

The increase in rod drop time will not result in an increase in the probability or consequences of any accident previously evaluated in the FSAR since the same surveillance requirements will be used to detect inoperable rods. The consequences of increased rod drop times have been evaluated and analyzed as reported in Enclosure 4 [of the licensee's letter of November 29, 1990] and determined to be within the acceptance limits.

The possibility of a new or different type of accident is not involved because the increase in rod drop time used in the analyses and in the TS is consistent with the design of the VANTAGE-5 fuel and does not indicate any new or different failure mechanism. Therefore, it does not indicate the possibility of a new or different type of accident.

The effects of the increased rod drop time has been included in the analyses and evaluations of accidents and transients included in Enclosure 4. These analyses demonstrated that the plant will remain within previously accepted limits, therefore the increase in the allowable rod drop time does not result in a significant reduction in a margin of safety.

4. WIDENED ACCUMULATOR WATER LEVEL RANGE

The proposed TS change identified above will provide additional operating flexibility to accommodate potential changes in accumulator water level which may be experienced over an eighteen month operating cycle. Large break LOCA analyses (FSAR 15.6.5) which must account for variations in accumulator water from the nominal level have been performed as part of the VANTAGE-5 fuel transition program. The large break LOCA was reanalyzed using the NRC approved BART/BASH methodologies. The results confirm that acceptable peak clad temperatures are still achieved assuming the modified accumulator water level range with no violation of any acceptance criteria. The variation in accumulator water volume would have an insignificant effect on sump level and boron concentration.

The widened accumulator water level range does not increase the probability or consequences of an accident previously evaluated in the FSAR. Accumlator water level is a parameter assumed for mitigation of the Large Break LOCA evaluated in the FSAR. Since accumulator water level is used in the role of a mitigator for this event, it does not contribute as an initiator to the probability of occurrence.

The consequences of an accident previously evaluated in the FSAR are not increased due to the widened accumulator water level range. The radiological consequences of a Large Break LOCA have been evaluated as part of the VANTAGE-5 fuel program and are bounded by the doses currently reported in the FSAR. Therefore, the conseqences to the public resulting from a LOCA previously evaluated in the FSAR have not been affected.

The widened accumulator water level range does not create the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failres associated with the accumulator are introduced as a result of the widened accumulator water level range. The change in water level range has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the TSs relative to the water level in the accumulators ensures that a sufficient volume of borated water will be immediately forced into the reactor core if the RCS pressure falls below the pressure of the accumulators, providing the initial cooling mechanism during large RCS pipe ruptures. The values of accumulator water level range defined by TS 3.5.1(b) have been used in the revised LOCA analysis. The revised LOCA analysis continues to demonstrate that the acceptance criteria are met. Therefore, the operating envelope defined by the TSs continues to be bounded by the revised analytical basis and the margin of safety provided by the revised accumulator water level range is not significantly changed.

5. P-11 SETPOINT

None of the safety analyses in the FSAR use the P-11 setpoint. Therefore, there are no effects on the safety analyses as a result of this small change to the P-11 setpoint. The 30 psi increase in the difference between the P-11 setpoint and the SI [Safety Injection] will reduce the probability of an inadvertent SI acutation. The P-11 setpoint assures that the block of the SI signal is removed when pressurizer pressure is above the P-11 setpoint.

The P-11 setpoint change does not increase the probability or consequences of an accident previously evaluated in the FSAR. The P-11 setpoint is not an input parameter to any transient in the FSAR. The P-11 setpoint in not an initiator for any transient. No new performance requirements are being imposed on any system or component. Consequently, overall plant integrity is not reduced. Therefore, the probability or consequences of an accident will not increase.

The P-11 setpoint change does not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure result of the P-11 setpoint change. The P-11 setpoint change does not challenge or prevent the performance of any safety related system during plant transients. Therefore, the possibility of a new or different kind of accident is not created.

The P-11 setpoint change does not involve a significant reduction in the margin of safety. It is only a convenience interlock to allow SI to be blocked when below the P-11 setpoint pressure during planned cooldowns and depressurizations. The P-11 setpoint defeats the SI block when the pressurizer

pressure is above the P-11 setpoint. The P-11 setpoint remains well below the initial operating pressure assumptions of the safety analyses. Therefore, the small change to the P-11 setpoint does not affect the operating envelope defined by the TSs. Therefore, the margin of safety provided by the P-11 setpoint is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425 Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 25, 1991

Description of amendment request: The proposed amendments would change Technical Specification (TS) 6.4.1.2 regarding the composition of the Plant Review Board (PRB) by substituting the Technical Support department for the Quality Control (QC) and the Nuclear Safety and Compliance (NSAC) departments.

Basis for proposed no significant hazards consideration determination: The proposed change affects only the Administrative Controls section of the TS. The change is needed to reflect the licensee's recent decision to upgrade the PRB membership by replacing supervisors with department managers. At Vogtle, the supervisors of the QC and NSAC departments report directly to the Manager of Technical Support. The change, therefore, allows this manager to represent both QC and NSAC on the PRB membership.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The revised description of the PRB composition does not increase the probability or consequences of accidents previously evaluated in the FSAR because the make-up of the PRB does not directly affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. The change to the PRB composition will not diminish its ability to review plant activities. Therefore, this change will not diminish the PRB's role in reviewing changes that could affect the probability or consequences of accidents.

The revision to the composition requirements of the PRB does not create the possibility of a new or different kind of accident other than those already evaluated in the FSAR. Since no physical change is being made in the plant or its operating parameters, it does not introduce the possibility of a new or different type of accident.

The margin of safety provided by the Technical Specification is not altered because the responsibilities, quorum, meeting frequency and functions of the PRB remain unchanged. The qualifications of the PRB members is unchanged. The composition of the PRB is upgraded. Therefore, the current level of safety, contributed by the PRB function will not be diminished by the proposed Technical Specification revision.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 29, 1991

Description of amendment request: The proposed amendment would correct references given in Technical Specifications (TSs) 3.1.2.2, 3.1.2.4 and 3.1.2.6 and in associated Bases 3/4.2.2 and 3/4.2.3. Specifically, in the Action statements of TSs 3.1.2.2, 3.1.2.4, and 3.1.2.6, it would replace the phrase "...SHUTDOWN MARGIN as required by Figure 3.1-2 at 200 degrees F..." with the phrase "...SHUTDOWN MARGIN as specified in the CORE OPERATING LIMITS REPORT for MODE 5 at 200 degrees F..." Similarly, in Bases 3/4.2.2 and 3/4.2.3, it would replace the phrase "...as defined by Figure 3.1-3" with the phrase "...as described in Specification 3.1.3.6."

Basis for proposed no significant hazards consideration determination: Previous License Amendments, No. 32 (Vogtle Unit 1) and No. 12 (Vogtle Unit 2), revised the TSs by removing reactor physics data that is cycle specific and relocating it to a Core Operating Limits Report (COLR). Figure 3.1-2 which provides shutdown margin requirements for Mode 5, and Figure 3.1-3 which provides control rod bank insertion limits, were removed from the TSs and placed in the COLR. However, the prior changes failed to revise references to these figures within certain TSs and Bases. The proposed amendments would correct this oversight by a purely administrative change to denote the correct location of the figures. No changes in the requirements of the Action statements are proposed.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The revisions to the Technical Specifications will not increase the probability or consequences of accidents previously evaluated in the FSAR because they do not alter any of the requirements of the Technical Specifications. The only change is in the location of the information.

The revisions to the Technical Specifications do not create the possibility of a new or different kind of accident other than those already evaluated in the FSAR because they do not create a change to the previous requirements. The changes do not involve any physical change to the plant or to the requirements for plant operation.

The proposed changes will not affect the margin of safety provided by the Technical Specifications because they do not result in any change to the previous requirements.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the proposed changes are purely administrative and that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 29, 1991

Description of amendment request: The proposed amendment would revise surveillance requirements of the Technical Specifications (TSs) regarding visual inspection of snubbers. Specifically, the visual inspection schedule of TS 4.7.8b and the visual inspection acceptance criteria of TS 4.7.8c would be revised consistent with NRC Generic Letter 90-09, "Alternative Requirements For Snubber Visual Inspection Intervals And Corrective Actions," dated December 11, 1990. The change would be accomplished, in part, by adding and referencing a new Table 4.7-2 to specify the snubber visual inspection interval consistant with the Generic Letter. Appropriate changes to the TS Bases and TS Index would also be made.

Basis for proposed no significant hazards consideration determination: The TS presently specifies a schedule for snubber visual inspections that is based on the number of inoperable snubbers found during the previous visual inspection. The present schedules for visual inspections and for the functional testing assume that refueling intervals will not exceed 18 months. In GL 90-09, the Commission's staff proposed an alternative inspection schedule based on the number of umacceptable snubbers found during the previous inspection in proportion to the sizes of the various snubber populations or categories. GL 90-09 also included specific acceptance criteria for the visual inspection; a snubber will be considered unacceptable if it fails this acceptance criteria. The alternative inspection interval is based on a fuel cycle of up to 24 months and may be as long as two fuel cycles, or 48 months, depending on the number of unacceptable snubbers found during the previous visual inspection.

In GL 90-09 the Commission's staff noted that the alternative schedule for visual inspections maintains the same confidence level as the existing schedule, should assist in reducing occupational radiological exposure, and is consistent with the Commission's policy statement on TS Improvements.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves the requirements that ensure the operability of snubbers is maintained through visual, as well as functional, testing. Operation of the plant under the provisions of the proposed amendment will continue to ensure that snubber operability is maintained. Technical Specification requirements for visual inspection will continue to be met but on a schedule based on the number of unacceptable snubbers found during the previous inspection in proportion to the size of various snubber populations or categories vice the number of unacceptable snubbers found during the previous inspection, irrespective of the size of the snubber population. The alternate inspection schedule for the visual inspection of snubbers maintains the same confidence level as the existing schedule. Therefore, the probability or consequences of any accident previously evaluated will not be affected.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to be operated in a manner different than that in which it was designed to be operated. Snubber operability will continue to be maintained under the proposed surveillance requirements by visual, as well as functional, testing.

The proposed change does not involve a significant reduction in the margin of safety. Snubber operability will continue to be maintained through visual inspection and functional testing. The alternate visual inspection schedule proposed by this change maintains the same confidence level of snubber operability as the existing schedule and replaces it. Based on the foregoing, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 12, 1991

Description of amendment request: The proposed amendment would add an action to Technical Specification 3.6.2.3 which would permit plant personnel to enter the drywell for maintenance work with the plant in Operational Condition 3 rather than cold shutdown when one of the drywell airlock door seals is inoperable. Entry into the drywell requires that the operable airlock door be open for approximately three minutes as personnel enter and exit, allowing the leakage through the inoperable seals to bypass the drywell. The proposed amendment also stipulates that the operable door be locked closed after each entry and exit and that a designated person ensure that both doors in the airlock are not open simultaneously.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change would not increase the probability or consequences of a previously evaluated accident because:

The proposed Technical Specification (TS) change would allow the operable door to be open for short periods of time when air is leaking past the inoperable door seals. The total equivalent drywell bypass flow in the event of total failure of the seals and assuming the operable door is open is 12,876 standard cubic feet per minute (SCFM) which is less than the safety analysis assumption of 40,110 SCFM for the accident involving a small break loss-of-coolant accident (LOCA) in the drywell. Therefore, the consequences of total failure of the seals on the inoperable door with the operable door open is encompassed by a previously analyzed accident.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

No changes are being made to the design of River Bend Station (RBS). The consequence of an open drywell door is the same as that evaluated in the safety analysis which is leakage out of the drywell. Therefore, no new or different accidents will result from the proposed TS change.

3. The proposed change would not involve a significant reduction in the margin of safety because:

Plant operation under the proposed change is within the existing safety analysis which assumes a total bypass flow of 40,110 SCFM for a LOCA inside the drywell. The proposed change does

not alter any part of the analysis. The probability of a small break LOCA during the time that the operable door is open is small (estimated at 1.7×10^{-8}). The reduction in the margin of safety is also minimized by monitoring entry and exit through the airlocks and assuring that the doors are not opened simultaneously. After each entry, the operable door will be locked closed. Containment integrity is maintained by continued compliance with Technical Specification 3.6.1.1, which verifies that containment air locks are operable and leakage rate from primary containment is within its limits.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: May 26, 1989, as amended January 5, 1990

Description of amendment request: The May 26, 1989, submittal would revise Technical Specification 3.4.3a. from its current requirements that only one door in each of the double-doored access ways to the Reactor Building may be opened at one time to a specification that would permit both doors in an access way to be open simultaneously during normal entry and exit operations. The May 26, 1989, submittal would also revise Technical Specification Figure 3.4.1 to correct errors of omission in the labeling of the graph on the figure. The revisions to Figure 3.4.1 would clarify that the Reactor Building pressures specified thereon are actually differential pressures. The January 5, 1990, submittal withdrew the proposed change to Technical Specification 3.4.3a. but retained the proposed changes to Figure 3.4.1. Therefore, the proposal to revise Figure 3.4.1 is the only remaining change being proposed in this proposed license amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The NRC staff agrees that the proposed changes to Figure 3.4.1 would correct errors of omission in the labeling of the graph on the figure. These proposed changes are similar to example (i) of the Commission's Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations published in the **Federal Register** on March 6, 1986 (51 FR 7744) in that these proposed changes would be a purely administrative change to correct errors, and therefore does not involve significant hazard consideration. Based on this review, the NRC staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket Nos. 50-220 and 50-410, Nine Mile Point Nuclear Station, Unit Nos. 1 and 2, Scriba, New York

Date of amendments request: March 13, 1991

Description of amendments request: The proposed amendments would revise Technical Specifications Section 6.0, Administrative Controls, to further reflect management changes approved in License Amendments Nos. 120 and 25 issued on December 31, 1990. Those license amendments approved unitized management organizations for each of the Nine Mile Point units. The proposed changes would replace the Manager Health Physics, whose responsibilities extend to both units, with a separate Manager Radiation Protection responsible for each unit and who would report directly to the Plant Manager for his unit. As part of this change, the title Manager Health Physics would be replaced by the title Manager Radiation Protection in Technical Specifications 6.5.1.2, 6.12.1c, and 6.12.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes enhance the Radiation Protection management capability and performance of Nine Mile Point Unit 1 [and Unit 2]. The proposed change does not decrease staffing levels or decrease levels of expertise and enhances the line of authority of the Plant Manager over the Radiation Protection Program.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes are administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

The operation of Nine Mile Point Unit 1 [and Unit 2], in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment will not cause existing Technical Specification operational limits or system performance criteria to be exceeded. The change enhances organizational effectiveness and maintains only qualified personnel in positions of responsibility. Therefore, the proposed administrative changes to the Technical Specifications will not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: March 18, 1991

Description of amendment request: The proposed amendment would incorporate into the Technical Specifications additional fire detection

and suppression systems resulting from various 10 CFR 50, Appendix R, modifications, design changes, and other changes, including proposed changes to correct errors in the current Technical Specifications and to provide consistency with those changes made in response to Generic Letter 87-09 and Amendment No. 51, as described in the licensee's submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has concluded that the proposed changes do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. The proposed changes offer greater coverage and provide for an enhanced capability for automatically controlling and/or extinguishing postulated fires and actually increase the level of fire protection for the plant. Consequently, the changes do not adversely affect the probability or consequences of any design basis accident and therefore previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes will increase the plants capability to detect, control, and extinguish fires. No new failure modes are introduced which would create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. The proposed changes do not have any adverse impact on any protective boundary. Since the proposed changes also do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 12, 1991

Description of amendment request: The amendments would revise Section 4.7.4 and the associated Bases in the Technical Specifications regarding visual inspection of snubbers as suggested in NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The performance of visual examinations is a separate process that complements the functional testing program and provides additional confidence in snubber operability. Changing the inspection interval to enhance ALARA will not cause nor effect the results of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different type of accident from any accident previously evaluated.

Neither the design, installation, function nor operation of a snubber is proposed to be modified. Providing an alternate visual inspection interval will not create the possibility of a new or different event.

III. This change does not involve a significant reduction in a margin of safety.

Functional testing of snubbers remains the basis for the established margin of safety. The proposed schedule for visual inspection will not impact the confidence level provided by functional testing. Furthermore, it generally will not allow performance of visual inspections and corrective actions during plant outages, thereby reducing unnecessary radiation exposure.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 28, 1991

Description of amendment request: The amendments would change the Technical Specifications (TS) to modify the pressure-temperature limits for the reactor pressure vessels (Category 1 changes) and to remove the schedule for withdrawal of material specimens (Category 2 changes). A surveillance capsule was removed from the Peach Bottom Atomic Power Station, Unit 3 reactor vessel at the end of Fuel Cycle 7 (removed in June 1989). The capsule contained flux wires for neutron fluence measurement, and Charpy and tensile test specimens for material property evaluation. A combination of flux wire testing and computer analysis was used to establish the vessel peak flux location and magnitude. Charpy V-Notch impact testing and uniaxial tensile testing were performed to establish the material properties of the irradiated vessel beltline (core region).

The irradiation effects were projected in accordance with the guidance in Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials", to conditions for 32 effective full power years (EFPY) of operation.

This amendment reflects the results of material analyses conducted as part of the reactor coolant pressure boundary material surveillance program pursuant to 10 CFR 50, Appendix G and Appendix H. The requested changes will alter the reactor vessel pressure-temperature operating limits for Unit 3. Additionally, a curve for the bottom head limits is being added to the PBAPS Units 2 and 3 Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The licensee has discussed the Category 1 changes and the Category 2 changes, which they classify as administrative changes, separately.

Category 1 Changes

The Category 1 changes requested herein do not involve a significant hazards consideration based on the foregoing Safety Assessment for the following reasons:

i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously

evaluated because the revised thermal and pressurization limits prohibit conditions where brittle fracture of reactor vessel materials is possible. Consequently, there will be no increase in the probability or consequences of previously evaluated accidents since the primary coolant pressure boundary integrity will be maintained as assumed in the safety design analyses.

The RT_{NDT} used to evaluate the new Unit 3 pressure-temperature limits for the beltline material and the Units 2 and 3 bottom head limits was based on the guidance in Regulatory Guide 1.99, Revision 2, which is the latest guidance on RT_{NDT} determinations. The revised Unit 3 pressure-temperature limit curves and bottom head curve for Units 2 and 3 were conservatively generated in accordance with the fracture toughness requirements of 10 CFR 50, Appendix G, as supplemented by Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code. The proposed Unit 3 minimum allowable temperature at which head bolting studs may be under tension is also in accordance with 10 CFR 50, Appendix G, as supplemented by Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code.

Removal of Figure 3.6.4 is of no safety significance because it was for information only and is no longer appropriate.

ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the revised Unit 3 thermal and pressurization limits and the addition of the Units 2 and 3 bottom head curve[s] do not create any new kind of operating mode or introduce any new potential failure mode. Conditions where brittle fracture of primary coolant pressure boundary materials is possible will be avoided by use of the revised and new curves.

iii) The proposed revisions do not involve a significant reduction in a margin of safety because the proposed pressure-temperature limits provide sufficient safety margin. The revised Unit 3 pressure-temperature limits and the new Units 2 and 3 head curves, were established in accordance with current regulations and the latest regulatory guidance on RT_{NDT} determinations. Although there is some reduction in safety margin, operation within the new limits will ensure that the reactor vessel materials will behave in a non-brittle manner and will remain conservative in that the original safety design bases will be preserved.

Category 2 Changes:

The NRC provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards considerations by providing examples in 51 FR 7751. An example (Example i) of a change that involves no significant hazards considerations is "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The Category 2 changes requested herein conform to this example and do not involve a significant hazards consideration based on the foregoing Safety Assessment for the following reasons:

i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect operations, equipment, or any safety-related activity. Thus, these administrative changes cannot affect the probability or consequences of any accident.

ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes are purely administrative and do not affect the plant. Therefore, these changes cannot create the possibility of any accident.

iii) The proposed revisions do not involve a significant reduction in a margin of safety because the changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information, deleting inappropriate information, and correcting errors. Thus, these changes cannot reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Walter R. Butler

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: April 1, 1991

Description of amendment request: This amendment revises numerous areas of the Trojan Technical Specifications as a result of the transition to Babcock and Wilcox nuclear fuel. This change of nuclear fuel supplier for Trojan Nuclear Plant provides advanced fuel design features, improved access to the vendor's analysis, and reduced cost. Operation with the new fuel design results in increased neutron efficiency and better economy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

A determination of no significant hazards considerations may be made if operation in accordance with the proposed change would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated;

2. create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. involve a significant reduction in margin of safety.

The specific concerns of the above items are addressed as follows:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The analyses provided in Topical Reports BAW-10176, BAW-10177, and BAW-10178 show that the change does not significantly change the results of previously evaluated events. These analyses provide the template for accident analyses assumptions that must be met by the cycle-specific reload analysis.

The Trojan Cycle 14 reload core with Mark-BW fuel will be evaluated to operate within the approved limits for accident analysis. The limits provided in the TTS and described in the FSAR provide the framework for accident analyses. By maintaining these limits, the probability or consequences of accidents related to the core changes do not significantly change. Thus, it is concluded that there is no significant increase in the probability or consequences of previously evaluated accidents.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change to Mark-BW fuel cores and mixed (transition) cores has been evaluated in the Topical Reports, and it was concluded that the change did not create new or different kinds of accidents. The changes in fuel suppliers has been evaluated for consideration of the effects of power distribution and peaking factors such that there are no restrictions on the use of Mark-BW fuel assemblies beyond those already established in the FSAR and TTS. Adherence to the safety analysis limits restricts the possibility of new or different accidents. Historically, new accidents have not been associated with changes in fuel suppliers as long as safety analysis limits continue to be met. It is concluded that transition to Mark-BW fuel does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is established by the acceptance criteria used by the NRC. Meeting the acceptance criteria assures that the consequences of accidents are within known and acceptable limits. The LOCA acceptance criteria are unchanged: peak cladding temperature of [less than or equal to] 2200° F, peak cladding oxidation of [less than or equal to] 17 percent, average clad oxidation of [less than or equal to] 1 percent, and long-term coolability. These requirements continue to

be met. The methods used to demonstrate conformance with these limits have changed, and are reviewed to assure that the methods, as well as the results, are acceptable. The acceptance criteria for DNB events has not changed and is still the 95x95 probability and confidence interval that DNB is not occurring during the transient. The DNB correlation, and methods used to demonstrate that DNB limits are met, have changed, and these changes are reviewed to assure conformance with acceptable practices. The shutdown margin change appears to affect a margin of safety, but the analysis results in BAW-10176 show that acceptable consequences are maintained. Thus, the new shutdown margin does not intrude on the margin of safety provided by the acceptance criteria. Other changes, as well as the changes discussed above, have been evaluated in the referenced safety analyses and are shown to meet applicable acceptance criteria. Other margins such as avoiding fuel centerline melting are not significantly changed. Based on these results, it is concluded that the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 1, 1991

Description of amendment request: Public Service Electric and Gas Company (PSE&G) requests that Technical Specification (TS) Surveillance 4.8.1.1.2.h.8, A.C. Sources - Operating, be revised by removing the following requirement:

Within 5 minutes after completing this 24 hour test, perform Surveillance Requirement 4.8.1.1.2.h.4.b).

The associated "*" footnote would also be removed.

Additionally, Surveillance Requirement 4.8.1.1.2.h.4.b would be modified by revising its "*" footnote to read:

*This diesel generator start (10 sec) and subsequent loading (130 sec) shall be preceded by an engine prelube period and operation at rated load for one hour, or until operating temperatures have stabilized.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Hope Creek Generating (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that significantly affects accident/malfunction probabilities or consequences previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed change involves the testing of the Emergency Diesel Generator (EDG) start and loading capabilities at normal operating temperatures. By requiring that the EDG has been run and loaded for at least 1 hour and/or that operating temperatures have stabilized prior to performing the start and load test, we ensure that the surveillance test is conducted at nominal operating temperatures. Removing the requirement that the test be initiated within 5 minutes of completing the 24 hour test run does not adversely impact the probability of equipment malfunction or that of any accident. TS 4.8.1.1.2.h.6 demonstrates the EDG's ability to start from ambient conditions on loss-of-power in conjunction with an ECCS actuation signal. Initiating the loss-of-offsite-power prescribed in TS 4.8.1.1.2.h.4 from normal operating temperature demonstrates loss-of-power detection, emergency bus deenergization and load shedding, diesel start with permanently connected loads, auto-sequencing of shutdown loads, etc., regardless of the EDG's starting temperatures. Therefore, performing this test from ambient conditions (in the current TS 4.8.1.1.2.h.4) and then again from normal operating temperatures at the end of the current TS 4.8.1.1.2.h.8 is an additional cycling of the EDG's (with its attendant mechanical stress and wear) that provides no meaningful test information.

The proposed revision will provide operational testing flexibility and reduce mechanical stress and wear while ensuring the same level of emergency diesel generator performance.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves testing requirements for the EDGs, wherein there is no change to the actual capabilities tested. There is no change in any plant equipment or method of operating that can create any accident.

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revisions will, by eliminating one additional start and load cycle on the EDGs, reduce mechanical stresses and wear on that equipment; thereby enhancing their reliability. This revision will not eliminate the testing of any currently tested operating function and will have no negative impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would revise Technical Specifications to reflect a change and an addition to Tables 3.5-5 and 4.1-5 concerning radiation monitors in the service water line discharges from the spent fuel pool heat exchangers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.91, these changes to the Technical Specifications have been evaluated to determine if the operation of the facility in accordance with the proposed amendment would:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

These proposed changes do not increase the probability or consequences of a previously evaluated accident or create a new or different type of accident, and there is no reduction in the margin of safety for any particular Technical Specification, since these are administrative changes only.

Therefore, Rochester Gas and Electric submits that the issues associated with this Amendment request are outside the criteria of 10 CFR 50.91; and a no significant hazards finding is warranted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 Street, N.W., Washington, D.C. 20005

NRC Project Director: Richard Wessman

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would modify the method of locking open motor operated valve 856, the refueling water storage tank (RWST) delivery valve, when the Reactor Coolant System temperature is at or above 350° F. This amendment will be reviewed with respect to a loss of coolant accident (LOCA).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant change in the probability or consequences of an accident previously evaluated, because the proposed modification does not degrade the capability of any safety system to perform its function. The open position of valve MOV-856 is assured through the key lock switch arrangement. Emergency core cooling functions during the injection phase of a LOCA would be unaffected since the valve is designed to fail as is (OPEN position). Prior to initiation of the recirculation phase of a LOCA, the proposed modification will allow operation of the valve from the control room to isolate the RWST. Therefore, a decrease in the radiological risk to personnel is achieved through elimination of a mandatory entry into a radiologically controlled area to unlock and close the breaker for the valve. This mandatory entry would also be eliminated when isolating the RWST from the reactor coolant system prior to placing the residual heat removal system into operation for plant cooldown.

The proposed change does not create the possibility of a new or different accident from any previously evaluated, because the proposed modification involves a change to the method of locking open the motor operated valve. No new safety functions will be provided and no new failure modes were identified.

The proposed change does not involve a significant reduction in the margin of safety, because the safety function of the valve to be maintained in the OPEN position will continue to be achieved and be required by the plant Technical Specifications. The proposed change will add control of the valve from the control room to achieve the CLOSE safety function to isolate the RWST. Hence, plant operability will be increased.

Therefore, Rochester Gas and Electric submits that the issues associated with this Amendment request are outside the criteria of 10 CFR 50.91 and a no significant hazards finding is warranted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Bishop, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Richard Wessman

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 8, 1990

Description of amendment requests: The licensee has requested to revise Technical Specification 3/4.6.1.2, "Containment Leakage." The proposed change would revise Surveillance Requirement 4.6.1.2.a and the associated Bases to permit the third Type A Test of each 10-year inservice interval to be conducted during a separate plant outage from the 10-year plant Inservice Inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

The proposed change would revise the requirement of TS 3/4.6.1.2 to perform the third Containment ILPT of each 10-year service period concurrent with the third IST of each 10-year service period. This would allow the third set of each test to be conducted during separate outages. The requirement to perform the two tests during the same outage stems from 10 CFR 50, Appendix J. The apparent basis for the coupling of the two types of tests, is to assure that the three Type A tests are not grouped together during the first 90 months of each 10-year operation cycle.

The proposed change would allow the 10-year Containment ILRT to be performed independent of the 10-year ISI. The manner in which the tests are performed, would remain unchanged. The acceptance criteria for the tests would also remain unchanged. Operation of the facility in accordance with the proposed change remains bounded by existing plant safety analyses. Furthermore, the proposed change would only affect the scheduling of one of the three Type A tests during each 10-year service period. The scheduling and performance of the remaining Type A tests would not be affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change would revise the surveillance to perform the third Containment ILRT during the shutdown for the 10-year plant ISI. The proposed change would allow the third Containment ILRT during each 10-year service period to be conducted during a separate outage from the ISI. The actual test to demonstrate Containment leakage rates are within their limits, would not be affected and will be conducted in the same manner. The Appendix J requirements will continue to be met with an exception to the schedular requirements of Section III.D.1(a). Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 8, 1991

Description of amendment requests: The licensee has requested to revise the Updated Final Safety Analysis Report to

allow the shutdown cooling system (SDC) to be used as the primary means of cooling the spent fuel pool. This changes the use of the SDC system as a credited backup system when available, to a primary means of spent fuel pool cooling. This change is needed to allow systems that normally provide cooling for the spent fuel pool to be removed from service for maintenance activities. Equipment which must be maintained includes cross train isolation valves of the component cooling water system and components common to both trains of the spent fuel pool cooling system. The shutdown cooling system will not be used as the primary means of spent fuel pool cooling when Technical Specifications require the shutdown cooling system to be operable for cooling the reactor core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

There will be no increase in any accident probability as a result of this change because cooling to the SFP [spent fuel pool] is maintained available at all times. * * * * * * *

The SDC [shutdown cooling] system is only to be used during a complete core offload when current Technical Specifications do not require SDC system operability for reactor core cooling.

The only potential accident remains to be a release of radioactivity from damaged fuel assemblies in the SFP. Both the SFP cooling system and the SDC systems are designed to maintain cooling capabilities to both the SFP and the core, respectively, which prevents this potential accident from occurring. In addition, the cooling capacity of each train in the SDC system is greater than the cooling capacity of the SFP cooling system.

During refueling outages there is only one complete train to provide a heat path from the SFP to the ultimate heat sink: one or two train(s) of the SFP cooling system, one train of CCW [component cooling water], one train of SWC [salt water cooling], and the associated emergency diesel generator. The above is true whether or not the SDC system is available for backup.

The proposed change will only affect the first component in the above chain. Thus SFP cooling will be provided by one train of SDC, one train of CCW, one train of SWC and the associated emergency diesel generator. This is allowable since during complete core offloads the single active failure criteria is not applicable for SFP cooling and Technical Specifications for the component cooling water system and salt water cooling system allow system outages, requiring only one train to be in service in other than MODES 1-4.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

All systems are being used as they were designed to be used. No new systems or design changes are being implemented. * * * The only change we are proposing is the use of the SDC system as the primary mode of cooling the SFP during maintenance of the normal SFP cooling systems.

Therefore, the possibility of a new or different kind of accident than previously evaluated is not being introduced by this change.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

Response: No

This proposed change does not cause a reduction in a margin of safety because, as before the change, only one train of cooling is relied upon from the Spent Fuel Pool to the Ultimate Heat Sink during a full core off load.

The proposed change does not reduce the capability of heat transfer, and it does not change the number of trains required to be available to cool either the core or the SFP. * * * In addition, the cooling capacity of the SDC system is greater than the cooling capacity of the SFP cooling system. Therefore, the margin [of] safety is increased, not reduced.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: April 15, 1991

Description of amendment requests: The licensee has requested to revise Technical Specification 3/4.5.2, "ECCS SYSTEMS - T_{avg} GREATER THAN OR EQUAL TO 350° F." This proposed change will remove the Shutdown Cooling (SDC) system Auto-Closure Interlock (ACI) surveillance requirement. This ACI will be removed when this proposed change is approved by the NRC. Removal of the ACI is consistent with the recommendation in Generic Letter 88-17, "Loss of Decay Heat Removal." One result of an analysis performed in response to Generic Letter 88-17 is that spurious ACI actuation throughout the industry contributes approximately 39 percent to SDC system unavailability. Removal of the ACI will enhance plant safety during mid-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The ACI is intended to guard against an overpressure condition of the SDC system due to operator error (i.e., the closure of only one SDC system isolation valve followed by a reactor coolant system pressurization). The reason for removing the ACI is to minimize potential loss of SDC due to inadvertent actuation.

Protection of the SDC system from an overpressure condition will still be provided by the open permissive interlock design to prevent opening of its associated isolation valve whenever system pressure is greater than or equal to 376 psia. Other protective features are the low temperature overpressure protection (LTOP) provided by the SDC system relief valve, individual valve position indication, and alarms to notify operators of valve misposition.

The potential loss of SDC due to the inadvertent operation of the ACI outweighs the redundant protection the ACI provides. Therefore, removal of the SDC system ACI will provide a significant decrease in the probability of a loss of SDC and will not increase the probability or the consequences of SDC system overpressure.

Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

SDC system overpressure and loss of decay heat removal are the only accidents ACI impacts. The ACI is intended to guard against SDC system overpressure due to operator error; it does not protect against hardware failure. The valve misposition alarms will warn against both operator error and hardware failure.

The ACI does not protect against an overpressure transient since the stroke times of these large motor operated valves are too long compared to a pressure transient event.

The chance of the loss of decay heat removal accident is reduced by this change because the potential of the SDC system isolation valves being closed by a spurious signal will be eliminated.

Therefore, the possibility of a new or different kind of accident is not created by the removal of the ACI.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in margin of safety?

Response: No

Protection of the SDC system from an overpressure condition will still be provided by the open permissive interlock designed to prevent opening of its associated isolation valve whenever system pressure is greater than or equal to 376 psia. Other protective features are the low temperature overpressure protection (LTOP) provided by the SDC system relief valve, individual valve position indication, and alarms to notify operators of valve misposition.

SCE is following the NRC guidelines and the CEOG recommendations. The protection discussed above ensures that the removal of the ACI will not result in a significant reduction in margin of safety. Furthermore, the removal of the ACI will increase the reliability of the SDC system, which will increase the margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 20, 1991

Description of amendment request: This license amendment request proposes revising Technical Specification 3.1.3.2 and its associated Bases to add a new Action Statement to address the situation where more than one digital rod position indicator (DRPI) per control rod bank may be inoperable. The new Action Statement would avoid unnecessary plant shutdowns per Technical Specification 3.0.3 yet is consistent with the overall protection provided by related Technical Specifications. Additionally, a proposed change to Technical Specification 3.1.3.1 is being transmitted to correct an erroneous figure reference.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1 -Involves a Significant Increase in the Probability or of an Accident Previously Evaluated

The proposed change to Technical Specification 3.1.3.2 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The potential for the new Action Statement to impact the probability or consequences of safety analyses for the plant lies only in the area of operator-exacerbated reactivity events due to a loss of RCCA position indication. RCCA events such as:

a) One or more dropped RCCAs within the same group (Updated Safety Analysis Report (USAR) Section 15.4.3)

b) Dropped RCCA bank (USAR Section 15.4.3)

c) RCCA ejection (USAR Section 15.4.8)

are not impacted since the new Action Statement does not involve a design change that would affect the probability of these events occurring nor their consequences. As such, the events of interest are:

a) Uncontrolled RCCA bank withdrawal at power (USAR Section 15.4.2)

b) Statically misaligned RCCA (USAR Section 15.4.3)

c) Withdrawal of a single RCCA (USAR Section 15.4.3)

The first of these events is a ANS Condition II transient that has been analyzed using a positive reactivity insertion rate greater than that for the simultaneous withdrawal of the two control banks having the maximum combined worth at maximum speed. Whether the event is caused by a failure in the rod control system or by operator error has no effect on the positive reactivity insertion rate assumed in these analyses. The protection systems assumed in the analysis of these events (power range neutron flux-high and low settings and Overtemperature-Delta T) are unaffected. Also, loss of DRPI would not result in more frequent control rod movement by the plant operators. Therefore, the new Action Statement would have no effect on the analysis of this event and the departure from nucleate boiling ratio (DNBR) design basis would still be met.

The most severe misalignment situation with respect to DNB arise from cases in which one RCCA is fully inserted, or where bank D is fully inserted to its insertion limits with one RCCA fully withdrawn. For these cases, as discussed in USAR Section 15.4.3, the DNBR remains above the safety analysis limit values. Also, the control bank insertion alarms remain available to warn the operator that bank insertion limits have been reached. The new Action Statement proposed herein does not alter these results.

The compensatory actions associated with this new Action Statement: placing the control rods under manual control addresses concerns associated with automatic rod motion due to the rod control system and inadvertent operator contribution to these events.

The worst case event of the above, the withdrawal of a single RCCA, is a ANS Condition III event. It has been analyzed in USAR Section 15.4.3 assuming that the operators ignore RCCA position indication or that multiple rod control system failures occur. No single electrical or mechanical failure in the rod control system could cause the accidental withdrawal of a single RCCA from a partially inserted bank at full power operation. The operator could deliberately withdraw a single RCCA in the control bank; this feature is necessary in order to retrieve a rod, should one be accidentally dropped. This new Action Statement does not change the plant design; therefore, there would be no change in the probability of this event being induced by unlikely, simultaneous electrical failures (USAR Section 7.7.2.2).

The proposed change to Technical Specification 3.1.3.1 does not involve a significant increase in the probability or consequences of an accident previously evaluated as this change is an administrative change to correct an erroneous reference.

Standard 2 -Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change to Technical Specification 3.1.3.2 does not create the possibility of a new or different kind of accident from any accident previously evaluated. This conclusion is based on the fact that no design changes are involved. The proposed change involves a loss of the digital rod position indicating system and establishes compensatory measures to maintain control rod position consistent with the assumptions used in existing accident and transient analyses. The new Action Statement provides sufficient time for troubleshooting while avoiding unnecessary plant shutdowns per Technical Specification 3.0.3. The compensatory actions require that rod position be inferred from flux maps, that RCS temperature be monitored and recorded, and that rod position changes be limited by placing the rod control system in manual control. Therefore, the potential for a new or different accident or event occurring is not created.

The proposed change to Technical Specification 3.1.3.1 is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 -Involve a Significant Reduction in the Margin of Safety

The proposed change to Technical Specification 3.1.3.2 does not involve a significant reduction in a margin of safety. As discussed under Standard 1 above, the results of the Chapter 15 safety analyses for the applicable events are not affected by the proposed changes. Therefore, the safety margins demonstrated by these analyses remain unchanged. Technical Specification

Bases Section 3/4.1.3 states that the Specifications of this section ensure that:

a) acceptable power distribution limits are maintained

b) the minimum SHUTDOWN MARGIN is maintained,

c) the potential effects of rod misalignment on associated accident analyses are limited.

The compensatory actions require that rod position be determined indirectly via the movable incore flux detectors and that RCS temperature be monitored and recorded. This addresses a) and b) above. Also, rod control is placed in manual which limits automatic rod motion. This addresses c) above. Asymmetric power distributions can be detected by the excore neutron flux detectors and core exist thermocouples.

The proposed change to Technical Specification 3.1.3.1 is an administrative change and does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Acting Director

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendment: March 27, 1991

Brief description of amendment: The proposed amendment would change the Zion Technical Specifications (TS), section 3.6, Containment Spray; section 3.8, Emergency Core Cooling and Core Cooling Support; section 3.15, Auxiliary Electrical Power System; section 6.6.3.B, Special Reports; and remove the Zion Confirmatory Order of February 29, 1980, Item B.6.

Date of individual notice in **Federal Register:** April 9, 1991 (56 FR 14392)

Expiration date of individual notice: May 9, 1991

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 31, 1989, as supplemented August 27, 1990.

Brief description of amendments: The free field seismic monitor has been relocated due to the construction of a training building. This amendment request changes the Technical Specification to provide a new location for the free field seismic monitor for the time-history accelerograph.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos.: 28 and 28

Facility Operating License Nos. NPF-72 and NPF-77: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6869) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 4, 1990

Brief description of amendments: The amendments proposed a change to Technical Specification 4.0.2 and its associated bases, based on the guidance provided in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals". The current Byron and

Braidwood Technical Specification 4.0.2 allows a surveillance interval to be extended by up to 25 percent of the interval. However, the combined interval for any three consecutive surveillances cannot exceed 3.25 times the original surveillance interval. This Technical Specification change request proposes to remove the 3.25 limitation for consecutive surveillances. The revised specification would allow a maximum of 25 percent extension for each surveillance period. The intent of this change is not to increase the time between the performance of surveillances. Rather, the purpose of this change is to allow for more operational flexibility when scheduling surveillances.

Date of issuance: April 8, 1991

Effective date: April 8, 1991

Amendment Nos.: 40 and 40, 27 and 27

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1990 (55 FR 51176) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: November 28, 1990

Brief description of amendments: These amendments would revise Section 6, Administrative Controls, of the Technical Specifications in three areas: 1) deletes all references to interim minimum shift manning requirements, 2) changes the title Assistant Vice President Quality Programs and Assessment to General Manager Quality Programs and Assessment, and 3) updates the analytical methodologies used to determine core operating limits for a reload cycle.

Date of issuance: April 19, 1991

Effective date: April 19, 1991

Amendment Nos.: 41 and 41 for Byron 1 & 2, 29 and 29 for Braidwood 1 & 2

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991, (56 FR 6870) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 18, 1991 and supplemented February 4, 1991.

Brief description of amendments: The amendments revise the Administrative Controls section of the Technical Specifications to change the title of Assistant Vice President Quality Programs and Assessment to General Manager Quality Programs and Assessment and to provide clarification of the STA staffing options and the actions performed to assure proper STA availability.

Date of issuance: April 8, 1991

Effective date: April 8, 1991

Amendment Nos.: 78 and 62

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9377) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 25, 1990, as supplemented February 21, 1991

Brief description of amendment: This amendment revises the Technical Specifications by removing the existing cycle-specific parameters and placing them in a Core Operating Limits Report under the control of the licensee. The proposed changes are consistent with guidance provided in the NRC Generic Letter 88-16.

Date of issuance: April 11, 1991.

Effective date: April 11, 1991.

Amendment No.: 64

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47569) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 26, 1990.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by removing the provisions of Specification 4.0.2 that limits the combined time interval for three consecutive surveillance intervals to less than 3.25 time the specified interval. The proposed amendment follows the guidance provided by Generic Letter 89-14, dated August 21, 1989.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 65

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6871) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 1, 1990

Brief description of amendment: This amendment revises the Technical Specification (TS) description of control rod assemblies to address the use of hafnium as a neutron absorber material.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 66

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6872) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: May 18, 1990.

Brief description of amendment: This amendment revises the TS by eliminating the requirement for use of the Rod Sequence Control System and decreasing the power level setpoint above which the Rod Worth Minimizer System would no longer be required.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 67

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9397) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 1, 1990

Brief description of amendment: This amendment revises the TS to clarify the reference points for setting the uptravel and downtravel stops on the refueling platform's hoists.

Date of issuance: April 19, 1991

Effective date: April 19, 1991

Amendment No.: 68

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6871) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 24, 1990

Brief description of amendments: The amendments revise the in-place penetration and bypass leakage requirement in TS 4.7.6.c.1, 4.7.6.f, and 4.7.6.g from less than 1% to less than 0.05%. The revision places a more restrictive limit in the TSs.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment Nos.: 118 and 100

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9377) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 29, 1991

Brief description of amendment: The amendment revised Technical Specifications (TSs) 3.3 and 4.5.2 regarding the reactor building emergency cooling system. Specifically, the TSs are clarified by defining a reactor building cooling train in terms of equivalent cooling capacity to meet the design requirements as specified in the Safety Analysis Report.

Date of issuance: April 10, 1991

Effective date: 30 days from the date of issuance

Amendment No.: 145

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9378) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 19, 1989, as supplemented January 15, 1991.

Brief description of amendment: The amendment changed Arkansas Nuclear One, Unit 2 Technical Specification 4.7.12.1.a on surveillance requirements for the spent fuel pool inspection frequency from once per 18 months to once per 5 years.

Date of issuance: April 9, 1991

Effective date: 30 days from date of issuance.

Amendment No.: 117

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 1990 (55 FR 8216) The additional information contained in the supplemental letter dated January 15, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1989, as supplemented January 25, March 8, June 21, August 23, November 8, and November 28, 1990.

Brief description of amendment: This amendment revises the TS to permit an increase in the capacity of spent fuel storage pool B and in the allowable fuel enrichment in fuel pool B.

The licensee's application included a one-time relief allowing removal of the missile shields over spent fuel pool B while modifying fuel racks. This modification is no longer necessary, and, as agreed to in discussions with the licensee, is not part of this amendment. The Notice of Withdrawal was issued with the amendment.

The application also included TS in both the current and new format of the Technical Specification Improvement Program. Only the current format TS changes have been reviewed and

approved by the staff in this amendment.

Date of issuance: April 16, 1991
Effective date: April 16, 1991
Amendment No.: 134
Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 12, 1990 (55 FR 9230) The March 8, June 21, August 23, November 8 and November 28, 1990 letters provided additional information which did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: January 3, 1991
Brief description of amendments: These amendments modify the licenses of Turkey Point Units 3 and 4 by extending the effectiveness of the Integrated Scheduling of Plant Modifications from December 31, 1990 to December 31, 1991.
Date of issuance: April 12, 1991
Effective date: April 12, 1991
Amendment Nos. 139, 134 Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the licenses.
Date of initial notice in **Federal Register:** February 6, 1991 (56 FR 4864) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 12, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: June 15, 1989, revised October 19, 1990
Brief description of amendment: The amendment modifies Appendix B Technical Specifications by deleting the remaining requirements for nonradiological environmental monitoring studies and reporting requirements.
Date of Issuance: March 6, 1991
Effective date: March 6, 1991
Amendment No.: 40
Facility Operating License No. DPR-73. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 892) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 6, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 1, 1991
Brief description of amendment: The amendment revised Technical Specification Table 3.3.2-1, "Isolation Actuation Instrumentation," to correctly identify actuation of the emergency mode of the main control room area ventilation system at reactor water low, low level 2, instead of low, low, low level 1, as currently reflected in the table.
Date of issuance: April 18, 1991
Effective date: April 18, 1991
Amendment No.:
Amendment No. 56
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 13, 1991 (56 FR 10582). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1991
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 1990 (three applications)
Brief description of amendments: The amendments change the Appendix A Technical Specifications by eliminating the requirement to shut down the plant in the event that one of four channels is inoperable in the post accident monitoring instrumentation for the steam generator level narrow range, containment pressure, and steamline pressure channels.
Date of issuance: April 15, 1991
Effective date: April 15, 1991
Amendment Nos. 23 and 13
Facility Operating License Nos. NPF-76 and NPF-80. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 31, 1990 (55 FR 45883 and 55 FR 45884). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 14, 1989
Brief description of amendments: These amendments make editorial and technical changes to Technical Specification (TS) 3/4.3.2.1, "Engineered Safety Features. Actuation System Instrumentation," with respect to surveillance requirements for manual actuation circuitry.
Date of issuance: April 5, 1991.
Effective date: April 5, 1991.
Amendments Nos.: 153/137
Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12594). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: August 25, 1989 as modified December 12, 1989, June 1, and October 26, 1990.
Brief description of amendments: These amendments make various changes to the Technical Specifications

(TS) Section 6.0 including title changes, editorial changes, changes to the qualifications, structure, and quorum requirements of the Plant Nuclear Safety Review Committee, and changes to reporting requirements. Additionally, editorial changes are being made to Sections 3.0 and 4.0 of the TS to remove obsolete references to Section 6.0 TS or add new references.

Date of issuance: April 9, 1991

Effective date: Immediately to be implemented within 180 days of date of issuance.

Amendments Nos.: 154 and 138

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 15, 1989 (54 FR 47606) and November 28, 1990 (55 FR 49453). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 15, 1991

Brief description of amendments: The proposed amendments modify TS 3/4.8.2.3 and TS 3/4.8.2.5 to reflect Regulatory Guide 1.129 by removing the requirement for a differential acceptance test for the DC bus trains (Train AB, Train CD, and Train N) during the 92-day surveillance.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendments Nos.: 155/139

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4866). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: November 30, 1990

Brief description of amendment: The amendment clarifies the surveillance requirements for the emergency power sources (the diesel generator and the gas turbine generator), defining the surveillance loading requirements and run times. In addition, the option of allowing the use of the gas turbine generator peaking operation to demonstrate operability in lieu of the monthly surveillance test run is eliminated.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment No.: 50

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4867) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 16, 1991, as supplemented by letter dated February 15, 1991.

Brief description of amendment: The amendment changes Technical Specification (TS) 4.7.A.3 "Containment Systems," to allow the use of the "mass point" methodology, in addition, or as an alternative to, the presently approved "total time" methodology.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment No.: 51

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 6, 1991 (56 FR 4868) as renoticed on March 6, 1991 (56 FR 9381). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 2, 1990

Brief description of amendments: The amendments revised the licenses by deleting License Conditions 2.C.(26) and 2.C.(9) in Operating License Nos. NPF-14 and NPF-22, respectively.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment Nos.: 106 and 74

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Licenses.

Date of initial notice in Federal Register: December 12, 1990 (55 FR 51182) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 16, 1990, as supplemented by letters dated April 2, August 7 and December 19, 1990.

Brief description of amendments: These amendments revised a footnote and test load ranges related to surveillance testing of the emergency diesel generators.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos.: 107 and 75

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 23, 1991 (56 FR 2554) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 26, 1990, as supplemented on February 13, 1991. The supplemental letter proposed to add the title of "President" in TS 6.2.3.4. The staff has determined that this additional change does not affect the proposed no significant hazards determination.

Brief description of amendments: These amendments changed the Technical Specifications to add requirements for the Independent Safety Engineering Group and to revise Nuclear Review Board membership and meeting frequency requirements.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment Nos.: 158 and 160

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 1990 (55 FR 14516) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: January 25, 1990

Brief Description of amendment: This amendment revises job titles and makes other administrative changes in the Technical Specifications.

Date of issuance: April 5, 1991

Effective date: April 5, 1991

Amendment No.: 81

Facility License No. DPR-34: Amendment revised the license.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 1991. No significant hazards consideration comments received: No

Local Public Document Room Location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 2, 1990

Brief description of amendments: These amendments modified Technical Specification Table 4.3-1, Reactor Trip System Instrumentation Surveillance Requirements, by adding a reference to Note 5 in the Channel Functional Test Column for Functional Unit 19. Note 5 allows the channels to be tested every 62 days on a STAGGERED TEST BASIS. Also, Functional Unit 19 on Table 3.3-1 and 3.4-1 was changed from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF."

Date of issuance: April 8, 1991

Effective date: April 8, 1991

Amendment Nos. 123 and 103

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9384) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: February 1, 1991 supplemented by letters dated March 19, 1991 and April 2, 1991. The March 19, 1991 and April 2, 1991 letters provided clarifying information and did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: This amendment allowed the use of an eight-second closure time for the main steam isolation valves at Salem 1 for the tenth operating cycle.

Date of issuance: April 16, 1991

Effective date: April 16, 1991

Amendment No. 124

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6880) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: February 4, 1991

Brief description of amendment: The amendment changes the Technical Specifications to allow a one-time extension of the test interval for the third Type A test in the first 10-year service period, provided the unit shutdown occurs by June 1, 1993, and provided the Type A test is performed before restart from Refueling Outage No. 7.

Date of issuance: April 10, 1991.

Effective date: April 10, 1991.

Amendment No.: 97

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9385) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: July 3, 1990 (TS 284)

Brief description of amendment: The Browns Ferry, Unit 2 Technical Specifications, Table 3.7.A is being revised to include containment isolation valves for Post Accident Sampling System (PASS), Drywell Control Air and Containment Atmosphere Dilution crosstie. Section 6.0 is being revised to provide administrative controls for PASS to ensure that samples of gaseous effluents and containment atmosphere can be obtained under accident conditions.

Date of issuance: April 10, 1991

Effective date: April 10, 1991, and shall be implemented within 30 days

Amendment No.: 194

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36350) By letter dated February 27, 1991, TVA supplemented its original TS amendment application with additional

commitments regarding the primary containment isolation design scheme at BFN. This letter did not revise any proposed TS changes and was considered to be within the scope of the original no significant hazards determination. The Commission's related safety evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 6, 1991

Brief description of amendment: The amendment changed the technical specifications to allow a moderator temperature coefficient (MTC) to be more negative than the current limit of -3.0×10^{-4} delta k/k/° F. The future limits of the negative MTC will be fuel-cycle specific and are permitted to appear in the Core Operating Limits Report as per the NRC Generic Letter 88-16.

Date of issuance: April 10, 1991

Effective date: April 10, 1991

Amendment No. 154

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 25, 1991 (56 FR 7734) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: December 21, 1990, as supplemented February 8, 1991.

Brief description of amendments: These amendments increase the boron concentration in the refueling water storage tank and in the safety injection accumulators, and require the minimum boron concentration in the spent fuel pool to be 2300 ppm. In addition, a TS has been added to lock out the primary grade water flow path during refueling and cold shutdown conditions.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment Nos. 153, 150

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9390) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of application for amendment: February 6, 1991

Brief description of amendment: The amendment eliminates the present operational restrictions on the main control room and emergency switchgear room air handling units, which were imposed by

Amendment No. 129 dated May 30, 1989.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No. 151

Facility Operating License No. DPR-37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9388) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of application for amendment: February 15, 1991

Brief description of amendment: This amendment allows a one-time change to the inspection interval for the low pressure turbine blades from the April 1991 refueling outage to the 1993 refueling outage.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No. 152

Facility Operating License No. DPR-37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9389) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: May 25, 1990

Brief description of amendments: These amendments modify the requirements for explosive gas concentration to conform to the applicable section of NUREG-0472, Section 3.11.2.5B.

Date of issuance: April 17, 1991

Effective date: April 17, 1991

Amendment Nos. 154 & 153

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28484) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: June 29, 1990

Brief description of amendments: These amendments relocate the Radiological Effluent Technical Specifications to the offsite Dose Calculation Manual or the Process Control Program, as appropriate.

Date of issuance: April 17, 1991

Effective date: April 17, 1991

Amendment Nos. 155 & 154

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6882) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application amendment: January 18, 1991

Brief description of amendment: The amendment revised the Technical Specification 3/4.7.4, "Snubbers," to reflect the recommendations of Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The GL proposes an alternative inspection schedule based on the number of unacceptable snubbers found during the previous inspection in proportion to the sizes of various snubber populations or categories.

Date of issuance: April 11, 1991

Effective date: April 11, 1991

Amendment No.: 91

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 20, 1991 (56 FR 6884) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station Franklin County, Massachusetts

Date of application for amendment: January 28, 1991 as supplemented February 28, 1991

Brief description of amendment: The amendment would allow YNPS to operate with fewer detector thimbles while maintaining sufficient data collection capability to ensure that operation of the YNPS core remains within licensed limits. The current Technical Specification governing operability of the Incore Instrumentation System requires that a minimum of 12 neutron detector thimbles be operable with at least two per core quadrant whenever the system is used for core power distribution measurements. This change reduces the minimum number of thimbles to nine and reduces the minimum number of thimbles per quadrant to one.

Date of issuance: April 18, 1991

Effective date: April 18, 1991

Amendment No.: 138

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 19, 1991 (56 FR 6692) The February 28, 1991, letter provided clarifying information, but did not change the initial proposed no signficant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 1991.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By May 31, 1991, the licensee may file a

request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendment: March 9, 1991

Brief description of amendment: The amendments to the Technical Specifications temporarily exclude four containment pathways from the requirement to perform Type C leak testing in accordance with 10 CFR 50, Appendix J, during current operating cycles Z1C12 and Z2C12, for Zion Units 1 and 2, respectively.

Date of issuance: April 5, 1991

Effective date: The exclusions provided by the amendments remain effective until startup for the next operating cycle for each unit.

Amendment Nos.: 122 and 111

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 5, 1991.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Richard J. Barrett

Dated at Rockville, Maryland, this 24th day of April 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-10140 Filed 4-30-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-440A AND 50-346A]

Ohio Edison Co.; The Cleveland Electric Illuminating Co.; The Toledo Edison Co.; Notice of Denial of Applications for Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied requests by the Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (the licensees) for amendments to Facility Operating License Nos. NPF-58 and NPF-3, issued to the licensees for the operation of the Perry Nuclear Power Plant, Unit 1, and the Davis-Besse Nuclear Power Station, Unit 1, located in Lake County and Ottawa County, Ohio, respectively. The application of Ohio Edison, dated September 18, 1987, pertained solely to License No. NPF-58, while the joint application of Cleveland Electric Illuminating and Toledo Edison, dated May 2, 1988, related to both licenses. Notifications of receipt of these amendment requests were published in the **Federal Register** on December 22, 1987 (52 FR 48473) and on June 16, 1988 (53 FR 22589).

The purpose of the licensees' amendment requests were to suspend the antitrust conditions in the two operating license as they apply to these respective licensees. The NRC staff has advised the licensees that the proposed amendments are denied, based on the staff's evaluation of the arguments made in support of the applications, the extensive public comments received on the proposed amendments, and the views expressed by the Department of Justice in a June 13, 1990 letter to the NRC. The licensees were notified of the Commission's denial of the proposed amendments in a letter dated April 24, 1991.

By May 31, 1991, the licensees, may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, NW., Washington, DC 20037 (attorneys for Ohio Edison), and to Michael T. Mishkin, Esq., Squire, Sanders and Dempsey, 1201 Pennsylvania Avenue NW., P.O. Box 407, Washington, DC 20044 (attorneys for Cleveland Electric Illuminating and Toledo Edison).

For further details with respect to this action, see (1) the applications for amendment dated September 18, 1987 and May 2, 1988, (2) the Department of Justice letter to the NRC, dated June 13, 1990, and (3) the Commission's letter to the licensees, dated April 24, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.; at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081; and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 24th day of April 1991.

John N. Hannon,

Director, Project Directorate III-3, Division of Rector Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-10287 Filed 4-30-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Wednesday, May 15, 1991 at Science Applications International Corporation (SAIC), 1555 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.

2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.

3. Discussion of Working Group actions.

A portion of the May 15th session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of those briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 528-6090 prior to May 14, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: April 26, 1991.

Damar W. Hawkins,

Executive Assistant to D. Allan Bromley, Office of Science and Technology Policy.

[FR Doc. 91-10333 Filed 4-26-91; 4:52 pm]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-69A]

Japanese Government Procurement Policies Affecting Architectural, Engineering and Construction-Related Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination pursuant to section 306 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2416; and request for public comment on proposed U.S. action under section 301 of the Trade Act.

SUMMARY: On November 21, 1989, the USTR determined, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce. The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at the time in light of certain commitments made by the Government of Japan. The USTR has been monitoring Japan's implementation of these commitments pursuant to section 306 of the Trade Act, and has been seeking a satisfactory resolution of all remaining concerns in bilateral negotiations, which have included a full review of the "Major Projects Arrangements" concluded by the United States and Japan in 1988. On November 21, 1989, the USTR announced that if Japan's implementation of its undertakings or progress in ongoing negotiations were unsatisfactory, the USTR would consider at that time what further action may be appropriate under section 301 of the Trade Act.

Negotiations with the Government of Japan since the end of 1989 have not yet resulted in a satisfactory resolution of remaining U.S. concerns regarding the Japanese Government procurement policies affecting architectural, engineering and construction-related services identified in the USTR's determination of November 21, 1989. Therefore, the USTR is considering taking action in response under section 301 of the Trade Act. Public comment is invited on the proposed determinations and action described below.

DATES: Public comments are due by noon on Friday, May 31, 1991.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant USTR for Japan and China, (202) 395–5070.

SUPPLEMENTARY INFORMATION: On November 21, 1988, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1182), the United States Trade Representative initiated an investigation under section 302 of the Trade Act of 1974, as amended, regarding those acts, policies and practices of the Government of Japan, and of entities owned, financed, or otherwise controlled by the Government of Japan, that are barriers in Japan to the offering or performance in Japan by United States persons of architectural, engineering, and construction services, and related consulting services.

On the basis of the investigation and after consultations with the Government of Japan and the affected U.S. industry, the USTR determined, on November 21, 1989, pursuant to section 304(a)(1)(A) of the Trade Act, that certain acts, policies and practices of the Government of Japan with respect to the procurement of architectural, engineering and construction services and related consulting services by the Japanese Government are unreasonable and burden or restrict U.S. commerce.

The USTR further determined, pursuant to section 304(a)(1)(B) of the Trade Act, that no responsive action under section 301 of the Act was appropriate at that time in light of (a) written commitments made by the Government of Japan regarding actions the Government of Japan intended to take to improve access for U.S. firms to its market, and (b) written commitments made by the Government of Japan to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including consultations that had been scheduled for spring 1990 in the context of a review of the Major Projects Arrangements concluded by the Governments of Japan and the United States in May 1988.

The USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan implements procurement policies in the construction sector in a way that limits competition and facilitates collective bidding practices ("dango"), including inadequate use of administrative measures restricting collusive bidding activities, and operation of the designated bidder system. Specific reasons for the USTR's determination were set forth in a **Federal Register** notice published on November 29, 1989 (54 FR 49150).

In addition, the USTR found it unreasonable, and a burden or restriction on U.S. commerce, that the Government of Japan uses open bidding procedures only in the 14 construction projects covered by the Major Projects Arrangements. In negotiations with the Government of Japan following these determinations, the United States has sought to expand the coverage of those Arrangements to additional public works projects, and to revise the Arrangements to address existing problems. However, those negotiations have not yet resulted in a satisfactory agreement.

The USTR's determination that no responsive action under section 301 of the Trade Act was appropriate at that time took into account several commitments made by the Government of Japan. In consultations with the Government of Japan on November 8–9, 1989, Japanese Government officials gave the United States written commitments, amplified by the USTR's subsequent discussions with Japanese Government officials in Tokyo and by a letter dated November 17, 1989, from the Minister of Construction, regarding actions the Government of Japan intended to take immediately to improve access for U.S. firms to its market. (See 54 FR 49150). The Government of Japan also committed in the November 17 letter, and again subsequent thereto, to ongoing bilateral consultations on all unresolved matters regarding access to the construction market, including those scheduled for spring 1990 in the context of a review of the Major Projects Arrangements.

Proposed Determinations and Action

As a result of monitoring pursuant to section 306 of the Trade Act, the USTR proposes to determine that Japan is not satisfactorily implementing measures to address the practices determined on November 21, 1989, to be unreasonable and to burden or restrict U.S. commerce. Therefore, the USTR proposes to take the following action, pursuant to the USTR's authority under section 301(c)(1)(B) of the Trade Act: To impose restrictions on the provision in the United States of architectural, engineering and construction-related services of Japan, by determining that no Japanese contractor or subcontractor shall be eligible to enter into such services contracts with certain federal agencies for the construction, alteration, or repair of any public buildings or public works in the United States. Specifically, the proposed action would bar Japanese contractors or subcontractors from federal or federally-funded public buildings or public works procurements by the U.S. Departments of Enery, Transportation, and Defense, including the U.S. Army Corps of Engineers, and the Bureau of Reclamation of the Department of Interior, in a manner consistent with the obligations of the United States under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Government Procurement negotiated under the auspices of the GATT.

Public Comment

In accordance with section 306(c)(2) of the Trade Act, interested persons are invited to submit written comments on the proposed USTR determinations and

action described above. Comments must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b) (55 FR 20593) and are due by noon on Friday, May 31, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223 USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–69A) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91–10292 Filed 4–29–91; 8:45 am]

BILLING CODE 3190–01–M

Notice With Respect to List of Countries Denying Market Opportunities for Government-Funded Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying market opportunities for U.S. products, suppliers or bidders for government-funded construction projects.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended, section 511 of the Energy and Water Development Appropriations Act of 1991, and section 340 of the Department of Transportation and Related Agencies Appropriations Act of 1991, the United States Trade Representative ("USTR") has decided not to include any countries at this time on the list of countries that deny market opportunities for products, suppliers or bidders for government-funded construction projects.

DATES: Effective April 28, 1991.

ADDRESS: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Piez, Deputy Assistant USTR for Japan and China, (202) 395–5070.

SUPPLEMENTARY INFORMATION: Section 115 of Public Law No. 100–223, the Airport and Airway Safety and Capacity Expansion Act of 1987, amended the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201–2225) ("Airport Act"), by adding section 533. Section 533(a) provides certain requirements and prohibitions applicable to use of funds from the Airport and Airway Trust Fund. Section 533(b) requires the USTR to make determinations with respect to whether foreign countries deny fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects of $500,000 or more and are funded (in whole or in part) by the governments of such foreign countries. Section 533(c) requires the USTR to maintain a list of countries identified under section 533(b) and to publish such list annually in the **Federal Register.**

Section 553(b)(2) specifies that the USTR, in considering which countries to list, shall take into account those foreign countries that are listed in the annual report on foreign trade barriers required under section 181(b) of the Trade Act of 1974, as amended ("Trade Act"), as maintaining barriers to U.S. construction services for certain construction projects. The only foreign country listed in the 1991 report on foreign trade barriers with a section on barriers to U.S. construction, architectural and engineering services is Japan.

Section 511 of the Energy and Water Development Appropriations Act of 1991 ("Energy and Water Act"), Public Law No. 101–514, 104 Stat. 2074, 2098–2100, and section 340 of the Department of Transportation and Related Agencies Appropriations Act of 1991 ("Transportation Department Act"), Public Law No. 101–516, 104 Stat. 2155, 2187–89, apply restrictions, with respect to funds appropriated under those acts, based on determinations essentially identical to that required by section 533(b) of the Airport Act.

On November 21, 1989, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988, Public Law No. 100–418, 102 Stat. 1107, 1182, I determined under section 304(a)(1)(A) of the Trade Act, 19 U.S.C. 2414(a)(1)(A), that certain acts, policies and practices of the Government of Japan with respect to barriers to the procurement of architectural, engineering and construction services, and related consulting services, were unreasonable and burdened or restricted U.S. commerce.

At the same time, I determined, under section 304(a)(1)(B) of the Trade Act, 19 U.S.C. 2414(a)(1)(B), that no responsive action under section 301 of that act was appropriate at that time in light of Japanese Government commitments to improve access by U.S. firms to its market and to consult with the United States on all unresolved matters regarding access to the construction market.

In view of certain commitments that the Government of Japan had made in response to the section 1305 investigation, and given the award of some contracts to U.S. firms, I did not determine last year that Japan denied fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in Japan for the purposes of section 533(b) of the Airport Act.

Nevertheless, I stated that specific difficulties remained in access by U.S. firms to the Japanese Government-funded construction market. I also noted that the United States was monitoring the Government of Japan's implementation of its undertakings regarding access to its government-funded construction market and intended to seek a satisfactory resolution of all remaining concerns. Finally, I stated that I would take into account Japan's implementation of its undertakings and progress in negotiations in making my determination under section 533(b) of the Airport Act this year.

Since May 1990, U.S. negotiators have held eight meetings with the Japanese Government to review the 1988 Major Projects Arrangements and to discuss means of improving access to the market in Japan for foreign construction companies. Those meetings have failed to produce satisfactory results.

In light of the lack of substantial progress in ensuring greater access by U.S. firms to the Japanese Government-funded construction market, I have proposed to apply restrictions under section 301(c)(1)(B) of the Trade Act with respect to the provision in the United States of architectural, engineering and construction-related services of Japan. Specifically, I have proposed to determine that no Japanese contractor or subcontractor shall be eligible to enter into such services contracts with certain federal agencies for the construction, alteration or repair of any public building or public work in the United States. In particular, the proposed action would bar Japanese contractors and subcontractors from federal or federally funded public building or public works procurements by the U.S. Departments of Energy, Transportation and Defense, including the U.S. Army Corps of Engineers, and

the Bureau of Reclamation of the Department of the Interior.

The action that I have proposed taking under the Trade Act with respect to the procurement of Japanese construction services parallels and subsumes the funding prohibitions that would apply in the event that Japan were listed under section 533 of the Airport Act, section 511 of the Energy and Water Act, and section 340 of the Transportation Department Act. Application of funding prohibitions under the latter three statutes at the same time that such prohibitions apply under the Trade Act would be redundant.

Under these circumstances, I do not now determine that Japan denies fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in Japan for purposes of these statutes.

List pursuant to section 533(c) of the Airport Act: None.

List pursuant to section 511(c) of the Energy and Water Act; None.

List pursuant to section 340(c) of the Transportation Department Act: None.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91-10293 Filed 4-29-91; 8:45 am]

BILLING CODE 3190-01-M

Notice of Countries Identified as Priority Foreign Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of countries identified as priority foreign countries under section 182(a) of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: Pursuant to section 182 of the Trade Act, 19 U.S.C. 2242, the United States Trade Representative (USTR) has identified India, the People's Republic of China, and Thailand as priority foreign countries.

EFFECTIVE DATE: USTR identified these countries as priority foreign countries on April 26, 1991.

ADDRESSES: Office of the United States Trade Representative, Room 409, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Carmen Suro-Bredie, Deputy Assistant U.S. Trade Representative for Investment and Intellectual Property, (202) 395-7320, Peter Collins, Director for India and Asean Affairs (202) 395-6813, Howard Krawitz, Director for the People's Republic of China (202) 395-5050, or Catherine Field, Associate General Counsel, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Under the Trade Act, as amended by the 1988 Omnibus Trade and Competitiveness Act, the USTR must identify annually those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property, and those foreign countries that are determined to be priority foreign countries. Priority foreign countries are those countries (1) whose acts, policies and practices are the most onerous and egregious and have the greatest adverse impact (actual or potential) on relevant U.S. products, and (2) that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective intellectual property protection. With respect to countries that deny fair and equitable market access for persons relying on intellectual property protection, priority foreign countries are those countries for which there is a factual basis for finding that the denial of market access results from the violation of international law or agreement, or the existence of discriminatory nontariff trade barriers.

Section 182(e) of the Trade Act requires that a list of foreign countries so identified be published in the **Federal Register.** Accordingly, notice is hereby given that the USTR has identified India, the People's Republic of China, and Thailand as priority foreign countries within the meaning of section 182 of the Trade Act. Pursuant to section 302(b)(2)(A) of the Trade Act, the USTR must decide, no later than May 26, 1991, whether to initiate an investigation of each of these countries' acts, policies or practices that was the basis for the identification of that country as a priority foreign country.

S. Bruce Wilson,

Assistant U.S. Trade Representative for Investment, Services and Intellectual Property.

[FR Doc. 91-10294 Filed 4-29-91; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—Kenneth A. Fogash, (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

New Notification Requirements for Certain Exemptions From Rules 10b-6, 10b-7, and 10b-8, File No. 270-351.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a condition of exemptive relief requiring notification to the Commission by persons relying on certain exemptions from rules 10b-6 (17 CFR 240.10b-6), 10b-7 (17 CFR 240.10b-7), and 10b-8 (17 CFR 240.10b-8) under the Securities and Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). Specifically, the condition requires that certain distribution participants distributing foreign securities eligible under rule 144A (17 CFR 230.144A) under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77 *et seq.*), in the United States ("U.S.") to Qualified Institutional Buyers ("QIBs") as defined in rule 144A(a)(1), pursuant to section 4(2), rule 144A, or Regulation D under the Securities Act, notify the Commission when relying on the exemptions. The Commission anticipates the required notification to occur by telefax or letter. The same notice requirement would apply to certain distribution participants in a distribution of foreign securities in the U.S. through rights, exempt from registration under the Securities Act, to institutional accredited investors. An additional notice requirement would apply to underwriters (or other entities performing similar functions) if, during the rights offering, the required discount level, discussed below, is narrowed. The Commission estimates that 20 broker-dealers annually will rely on the exemptions.

Subject to certain conditions, the exemptions permit distribution participants, other than issuers and their affiliated purchasers, to effect non-U.S. transactions during the period when certain foreign securities eligible under rule 144A are being distributed to QIBs, in transactions exempt from registration under the Securities Act pursuant to section 4(2), rule 144A or regulation D thereunder. Additionally, subject to certain conditions, the exemptions permit non-U.S. transactions to foreign securities during the period when securities are being distributed through rights to institutional accredited investors in transactions exempt from registration under the Securities Act.

Rule 10b-6 prohibits persons participating in a distribution from bidding for or purchasing the security being distributed, or a related security, during the distribution. Rule 10b-7 applies to "any person who, either alone

or with one or more other persons, directly or indirectly, stabilizes the price of a security to facilitate an offering of any security." Stabilization transactions are those involving the "the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or stabilizing the price of any security." Rule 10b–7(c) provides: "No stabilizing bid shall be made except for the purpose of preventing or retarding a decline in the open market of a security." Stabilization does not contemplate transactions in excess of those required to prevent or retard a decline in the market price, or those which raise the market price of a security or which create a false or misleading appearance of active trading in a security, or a false or misleading appearance with respect to the market for a security. Transactions conducted in compliance with rule 10b–7 are excepted from rule 10b–6. Rule 10b–8 applies to "any person participating in a distribution of securities being offered through rights on a pro rata bases to security holders." Rule 10b–8 establishes conditions pursuant to which bids and purchases of the rights, and offers and sales of the security being distributed, may be made. Transactions effected in compliance with rule 10b–8 are excepted from rule 10b–6.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10205 Filed 4–30–91; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

Extension, File No. 270–298, Rule 17Ac2–2 and Form TA–2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval rule 17Ac2–2 (17 CFR 240.17Ac2–2) and Form TA–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which requires registered transfer agents to file an annual report of their business activities. Approximately 1,000 respondents that are exempt from providing certain information contained in the form incur an estimated average burden of one hour annually to comply with the rule. An additional 400 respondents incur an estimated average burden of five hours annually to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 16, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10206 Filed 4–30–91; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142.

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension, File No. 270–95, Rule 17Ac2–1(c) and Form TA–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac2–1(c) [17 CFR 240.17A2–1(c)] under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration. Approximately 350 respondents incur an estimated average burden of one and one-half hours annually to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–10207 Filed 4–30–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1380]

Certain Foreign Passports Validity

Barbados and Dominica are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This Notice amends Public Notice 1198 of May 15, 1990 (55 FR 20234).

Dated: April 23, 1991.

James L. Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 91–10201 Filed 4–30–91; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice NO. PE–91–18]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part

11, this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 16, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 25, 1991.

Deborah E. Swank,

Acting Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26532.
Petitioner: McCall Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow petitoner's properly trained pilots to perform the task of converting the cabins of petitoner's aircraft from passenger to cargo or cargo to passenger configurations.

Dispositions of Petitions

Docket No.: 13199.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4652, as amended, which allows pilots contracting with petitioner who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate to complete a portion of that practical test in a visual simulator.
Grant, May 31, 1990, Exemption No. 4652B.

Docket No.: 2456.
Petitioner: Dalfort Corporation.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4955A, which allows pilots contracting with petitioner who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate to complete a portion of that practical test in a visual simulator.
Grant, May 31, 1990, Exemption No. 4955B.

Docket No.: 25080.
Petitioner: Aeroservice Aviation Center, Inc.
Sections of the FAR Affected: 14 CFR 6.156(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To extend Exemption No. 4745A, which allows petitioner and persons who contract with petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, March 29, 1991, Exemption No. 4745B.

Docket No.: 25126.
Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4); and 135.165 (a)(1), (b)(5), and (b)(6).
Description of Relief Sought/ Disposition: To extend Exemption No. 4821, as amended, which allows petitioner to operate airplanes in extended overwater operations with one long-range navigation system and one high-frequency communication system within certain named areas subject to certain conditions and limitations.
Grant, March 26, 1991, Exemption No. 4821B.

Docket No.: 25242.
Petitioner: International Aerobatic Club.
Sections of the FAR Affected: 14 CFR 61.58(c) and 91.4.
Description of Relief Sought/ Disposition: To extend Exemption No. 4941, which allows Experimental Aircraft Association pilots and petitioner's member pilots to complete a training course in lieu of a pilot proficiency check as required by § 61.58(c).
Grant, July 2, 1990, Exemption No. 4841A.

Docket No.: 25785.
Petitioner: Western Oklahoma State College.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought/ Disposition: To allow petitioner to conduct part 141 ground training at Erick High School in Erick, Oklahoma, approximately 40 miles from its main operations base in Altus, Oklahoma.
Grant, June 13, 1990, Exemption No. 5193.

Docket No.: 25942.
Petitioner: Gerard A. Preiser.
Sections of the FAR Affected: 14 CFR 91.42 (a)(1) and (a)(2).
Description of Relief Sought/ Disposition: To allow petitioner to operate five aircraft with an airworthiness certificate issued under the experimental category to be used for the purpose of skywriting.
Denial, June 22, 1990, Exemption No. 5201.

Docket No.: 26056.
Petitioner: Accelerated Ground Training, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing requirements.
Grant, April 3, 1990, Exemption No. 5169.

Docket No.: 26245.
Petitioner: Airline Crew Training, Incorporated.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (d)(2) and (d)(3); 61.67(d)(2); 61.157 (d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet

certain training, checking, and testing requirements.

Grant, May 31, 1990, Exemption No. 5294.

Docket N.: 26479.

Petitioner: Business Express, Inc.

Sections of the FAR Affected: 14 CFR 121.590.

Description of Relief Sought/ Disposition: To allow petitioner, an air carrier operating under part 121, to continue to operate its Saab 240 airplanes into Sikorsky Memorial Airport even though that airport does not hold an airport certificate issued under part 139 of the Federal Aviation Regulations.

Denial, April 4, 1991, Exemption No. 5294.

[FR Doc. 91-10253 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616

or

J. Robert Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12252, Telephone: (518) 457-6452

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) and the County of Monroe, will prepare an environmental impact statement (EIS) on a proposal to construct a moveable bridge across the Irondequoit Bay outlet to Lake Ontario in the Towns of Irondequoit and Webster.

This project is considered necessary to restore a transportation link between the Towns of Irondequoit and Webster which was severed when the original low level fixed bridge was removed by the U.S. Corps of Engineers in 1985. Alternatives under consideration include; (1) Taking no action, and (2) construction of a two lane moveable bridge across the outlet. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

The scoping process for this project has been completed and included contact with all parties and agencies known to have an interest or regulatory authority with respect to the proposed project. Scoping meeting were held on:

August 16, 1989 in the Town of Irondequoit at East Ridge Sr. High School;

August 17, 1989 in the Town of Webster at the Webster Jr. High School;

August 24, 1989 at the Irondequoit Town Hall.

A public hearing will be held later this year. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the public hearing.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

Issued on: April 22, 1991.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 91-10192 Filed 4-30-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 91-36]

Cancellation "With Prejudice" of Broker License No. 3648, Angelo Cammarano

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 3648 issued to Angelo Cammarano, effective December 20, 1990, the date that Mr. Cammarano voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10171 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-40]

Cancellation "With Prejudice" of Broker License No. 6264, John Cammarano, Sr.

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 6264 issued to John Cammarano, Senior, effective December 20, 1990, the date that Mr. Cammarano voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10172 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-37]

Cancellation "With Prejudice" of Broker License No. 4776, Joseph R. Lyons

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 4776 issued to Joseph R. Lyons, effective January 7, 1991, the date that Mr. Lyons voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10173 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-38]

Cancellation "With Prejudice" of Broker License No. 5382; Mark Andrew Parsons

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker license no. 5382 issued to Mark Andrew Parsons, effective January 15, 1991, the date that Mr. Parsons voluntarily surrendered his license.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10174 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-39]

Revocation of Individual Broker License No. 6068; Roberto Salinas

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on February 2, 1991, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.53 of the Customs Regulations, as amended (19 CFR 111.53), revoked the individual broker license No. 6068 issued to Roberto Salinas. In accordance with 19 CFR 111.74, this revocation became effective on April 3, 1991.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10175 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-41]

Suspension of Individual Broker License No. 7045; Thomas J. Steinbach

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on February 2, 1991, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111.53 of the Customs Regulations, as amended (19 CFR 111.53), suspended for a period of 3 years the individual broker license No. 7045 issued to Thomas J. Steinbach. In accordance with 19 CFR 111.74, this suspension became effective on April 3, 1991.

Dated: April 11, 1991.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 91-10176 Filed 4-30-91; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Cancellation of Closed Meeting

The previously announced closed meeting (**Federal Register**, April 24, 1991, 56 FR 18877) of the National Credit Union Administration scheduled for 9:00 a.m. Tuesday, April 30, 1991, has been canceled.

The Board voted unanimously to delete the following and only item on the agenda of the previously announced closed meeting and to cancel that meeting because consideration of the scheduled item would have been premature.

The previously announced item was:

1. Office Space Evaluation. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-10415 Filed 4-29-91; 1:52 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 56, No. 84
Wednesday, May 1, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-814]

Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan

Correction

In notice document 91-9385 beginning on page 16300 in the issue of Monday, April 22, 1991, make the following correction:

On page 16303, in the second column, under *DOC Position* at the bottom, in the first line, "no" should read "an".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

Correction

In notice document 91-8037 appearing on page 14089, in the issue of Friday, April 5, 1991, in the third column, under *Commodities*, in the first line, "Ear Plub Inserter, 6516" should read "Ear Plug Inserter, 6515".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6844

[MT-930-4214-10; MTM 78802]

Withdrawal of Public Lands for the Upper Missouri National Wild and Scenic River Corridor; Montana

Correction

In rule document 91-8354 beginning on page 14476 in the issue of Wednesday, April 10, 1991, make the following corrections:

1. On page 14476, in the third column, in the land description, under **Principal Meridian Montana**, in the fifth line, after "NW¼;" the ";" should be removed.

2. On page 14477, in the third column, in the land description, under T. 22 N., R. 18 E., in the fifth line, after "S½NE¼" insert a ",".

3. On page 14478, in the third column, in the land description, under T. 23 N., R. 14 E., in the seventh line, after "Sec. 9," insert "E½,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-13]

Alteration of the Chicago Terminal Control Area; IL

Correction

In rule document 91-7632 beginning on page 13526, in the issue of Tuesday, April 2, 1991, make the following corrections:

On page 13528, in the third column, under **REGULATORY FLEXIBILITY DETERMINATION**, in the sixth line "review which" should read "review rules which".

§71.401(b) [Corrected]

On page 13529, in the first column, the heading "§ 71.401 [Amended]" should read "§ 71.401(b) [Amended]".

BILLING CODE 1505-01-D

federal register

Wednesday
May 1, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Technical Assistance To Aid Residents of Public Housing Sites (in CDBG Entitlement Communities) To Become Self-Employed; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-325; FR 2964-N-01]

Funding Availability (NOFA) for Technical Assistance To Aid Residents of Public Housing Sites (in CDBG Entitlement Communities) To Become Self-Employed

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1991.

DATES: The application due date will be specified in the application kit. Applicants will have at least 60 days to prepare and submit their proposals. Further, the 60-day (or more) response period shall begin to run from the first date upon which applications are made available.

SUMMARY: This NOFA announces the availability of $2 million in grants to provide technical assistance in support of local self-employment projects, to assist residents of public housing sites to become self-employed. The technical assistance must be for activities being carried out, or to be carried out, in metropolitan cities or urban counties entitled to receive Community Development Block Grant (CDBG) assistance. In the body of this NOFA is information concerning:

(a) The principal objective of this technical assistance competition, the funding available, eligible applicants and activities, and factors for award;

(b) The application process; and

(c) A checklist of application submission requirements.

FOR MORE INFORMATION AND A COPY OF THE APPLICATION KIT, CONTACT: Mr. George Chabot, Office of Procurements and Contracts (ACS-GC), Department of Housing and Urban Development, 451 Seventh Street, SW., room 5256, Washington, DC 20410, (202) 708-1585. Requests for application kits must be in writing, but may be faxed to (202) 401-2032. The TTD number for the hearing impaired is (202) 708-2526. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under title I, section 107(b)(4) of the Housing and Community Development Act of 1974, as amended.

Program requirements (including eligible activities) applicable to awards made under this competition are contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program).

B. Allocation Amount and Form of Award

For this competition, HUD is making available up to $2 million in Community Development Technical Assistance Program funds for individual awards ranging between $100,000 and $200,000. Each award will be funded as a grant. Specific work activities and project budgets will be negotiated at the time of the grant award. Each award will be subject to the requirements of 24 CFR 570.400, 24 CFR 570.402, and 24 CFR part 570, subparts A, C, J, K, and O.

C. Description of Technical Assistance Competition

1. Background and Purpose

The primary objective of title I of the Housing and Community Development Act of 1974, as amended (the Act), and of the community development program of each grantee under title I of the Act, is the development of viable urban communities, by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for persons of low and moderate income. Section 107(b)(4) of the Act authorizes the Secretary of HUD to award technical assistance grants to eligible applicants to assist in planning and carrying out local CDBG programs to achieve the objective of title I.

The purpose of the competition announced by this NOFA (consistent with the primary objective of title I—to expand the economic opportunities of low-income persons) is to provide technical assistance to CDBG-funded activities which help low-income residents of public housing (sometimes referred to as "PHA residents") acquire the skills and knowledge they need to start and successfully operate small businesses.

HUD has found that, generally, conventional financial intermediaries are disinclined to finance the ventures of low-income persons, including PHA residents, who need modest amounts of money to start and maintain small businesses.

Further, the Secretaries of HUD and the Department of Health and Human Services (HHS) are aware that disincentives to self-employment exist The Secretaries have jointly pledged tc explore and identify regulations of certain HUD and HHS programs that may hinder self-employment opportunities (e.g., income limitations in the Aid to Families with Dependent Children Program, rent ceilings, and asset limitations). To the extent permissible, the Secretaries will seek to grant to organizations, participating in local self-employment projects funded under this competition, waivers of HUD and HHS rules that may restrict the successful operation of these local projects.

Thus, successful applicants will be, or will obtain, technical assistance providers who will facilitate skills and knowledge in planning and carrying out CDBG-assisted local self-employment projects to benefit residents of PHA sites.

Generally, these local projects are to be designed to recruit and screen prospective small business candidates; train and counsel them throughout the project; conduct market research in and nearby the PHA sites; help the candidates to get a product or service to market; obtain venture financing, where necessary; seek waivers of welfare or other program requirements that inhibit income production by low-income persons; and arrange supportive services for the low-income participants in this project.

The following presents examples of small businesses that low-income, PHA residents may start:

- For family and personal care: Food cooperative, barber and beautician services, child- and elder-care center within a PHA, food service and catering, escort services.
- For business services: Small appliance sales and repairs; furniture repair and reconditioning; upholstery; shoe repair; telemarketing; small business administration and office services; telephone answering service.
- For building management and services: Apartment cleaning; furniture moving; lawn care and maintenance, routine minor building repairs; repainting and plastering; weatherization; trash hauling and waste management and recycling;
- For performing arts: Small bands and combos; entertainment services.

In a number of demonstration projects around the country, low-income

residents are now providing many of the small business services, noted above, under contract to public housing authorities for work previously contracted out by those authorities to the larger business community.

2. Eligible Activities

Eligible technical assistance activities are specified in 24 CFR 570.402.

Technical assistance activities eligible for funding under this NOFA include the provision of skills and knowledge to facilitate in the planning, development and administration of these types of CDBG-assisted activities, for example:

- Recruiting, screening, testing low-income PHA candidates in order to select promising future business owners;
- Training, and serving as mentors to, small business candidates throughout the entire cycle of business start-up and one year of operation;
- Conducting market research on the types of small business products or services, and market areas, that would be economically feasible in and nearby the PHA sites, or teaching candidates how to do market research;
- Assisting candidates to accomplish the entire cycle of product/service design, development, and marketing;
- Assisting them to identify sources of venture capital and to secure start-up and operating financing;
- At local option and on behalf of the candidates, identifying financial intermediaries committed to economic development in low-income areas and securing venture capital for the candidates;
- Analyzing rules and requirements of HUD and/or HHS programs that are disincentives for the candidates to commit to economic self-sufficiency; seeking waivers of such rules and regulations that would be applicable to the candidates participating in local self-employment projects funded under this competition;
- Analyzing and securing supportive services (such as day care and transportation), as needed, in order to enable candidates to commit fully the time and energy required to start and operate small businesses; and
- Coordinating activities with all relevant Federal, State, and local agencies.

Applications may focus on the establishment of new local projects, or on the enhancement of existing projects, designed to help low-income residents of PHA sites to become self-employed.

Applications must focus the provision of technical assistance on activities underway or to be carried out at the PHA sites with CDBG funds to assist PHA residents to start and operate small businesses.

Technical assistance is not available for the carrying out of public services or any of the other eligible activities under the CDBG Program, except for those specified in 24 CFR 570.402.

3. Eligible Applicants

Communities that are metropolitan cities or urban counties receiving CDBG entitlement grants and non-profit organizations (including resident management corporations and resident councils), for-profit organizations, and public housing authorities, proposing to provide technical assistance to such metropolitan cities or urban counties, are eligible to apply under this NOFA.

Respondents to this NOFA should be alert to two statutory provisions in the community development technical assistance program. The Request for Grant Application (RFGA) will contain specific instructions for satisfying these provisions.

The first statutory provision is that activities funded under the technical assistance program clearly relate to activities funded under the CDBG Program. Technical assistance is defined as facilitating skills and knowledge in planning, developing, and administering activities under title I of the Act in entities that may need but do not possess such skills and knowledge.

Accordingly, the RFGA will specify that all applications must include a statement identifying the amount of CDBG funds committed, or to be committed, to the activities for which the technical assistance is to be provided; the dates of commitment or planned commitment; the specific activities undertaken or planned to be undertaken with the CDBG assistance; the location of the PHA site(s); and the relationship between the CDBG activities and the proposed self-employment technical assistance activities. The statement of commitment must be signed by the chief executive officer of the CDBG-funded entitlement community which is the applicant or, in the case of other applicants, wherein the public housing is located.

The second statutory provision requires an entity proposing to provide technical assistance within a community to be designated by that community as a technical assistance provider. Accordingly, the RFGA will specify that applicants which are non-profit or for-profit organizations, or PHAs, must obtain and submit with the application a designation letter from the CDBG-funded entitlement community where the public housing is located. The letter must be signed by the chief executive officer and must designate the applicant as a technical assistance provider to the community's CDBG program for purposes of the technical assistance to be provided.

Applicants whose statement of CDBG funding commitment or designation letter is pending must provide written evidence that a request for the statement of commitment, or for the letter of designation, is awaiting official action and sign-off by the chief executive officer. In such cases, applicants must submit the required letter or statement to HUD within 30 days following the application deadline date. Failure to do so within 30 days following the deadline date may disqualify the applicant.

4. Factors For Award

HUD will use the following criteria to evaluate and score applications received in response to this NOFA. HUD will rank the applications according to score and will fund them in rank order, reserving the option, if needed, to establish a minimum score for funding. Grants will be awarded based upon the highest scores which represent the best overall assessment of the potential of the proposed work activities for achieving the principal objective of this competition: to help low-income PHA residents to become self-employed. The factors and the corresponding maximum number of points for each subfactor (out of a total of 100 points) are as follows:

(a) The probable effectiveness of the application to facilitate skills and knowledge in planning, developing, and administering local CDBG-funded activities to help PHA residents become self-employed. (20)

(1) The extent to which the proposed technical assistance activities will facilitate skills and knowledge in planning, developing, and administering the CDBG-funded local self-employment project. (7)

(2) The extent to which CDBG funds have been, or will be, committed to self-employment project activities for the selected PHA residents. (7)

(3) The extent to which the proposed activities represent a technically sound approach for implementing the local self-employment project. (6)

(b) The extent to which proposed activities significantly affect key problems identified in the application. (40)

(1) The extent to which the application adequately describes procedures (i) for analyzing small business market potentials in or nearby the PHA site(s), (ii) for determining economically feasible products or

services to be marketed, (iii) for determining the employment needs of, and HUD/HHS regulatory barriers to self-employment faced by, PHA residents, and (iv) for screening, testing, and recruiting suitable candidates for small businesses from among PHA residents. (6)

(2) The extent to which the application's technical assistance activities effectively prepare and assist the small business candidates to start-up and maintain a small business through a one year cycle. (6)

(3) The extent to which the proposed project will assist candidates to locate and acquire the venture capital needed to start-up a small business and operating capital to sustain it. (6)

(4) The extent to which the applicant proposes to create financial intermediaries, or to use existing ones, committed to aiding low-income PHA residents to obtain venture capital. (6)

(5) The potential effectiveness of applicant's proposed public-private-academic partnership of entities (such as government agencies, business development groups, corporations, and vocational training schools, high schools and universities) necessary to carry out the proposed project. (5)

(6) The extent to which the applicant commits or arranges the commitment of cash or in-kind contributions from participating members of the partnership. (6)

(7) The applicant's commitment and proposed procedure to identify and seek waivers of Federal or State regulatory barriers and disincentives to self-employment by PHA residents. (5)

(c) The extent to which the proposed activities would be replicable at other PHA sites, either within the applicant's community or in other CDBG-funded communities. (5)

(1) The effectiveness of the technical plan whereby the applicant will collect and analyze data that would be useful to other communities in creating and implementing self-employment projects. (2)

(2) The effectiveness of the applicant's proposed method for disseminating the experiences gained through this project to other organizations and communities. (3)

(d) The extent to which the applicant's organizational and management plan and project work plan can ensure that the technical assistance project will be well-managed and protected from waste, fraud, or other abuse of funds. (15)

(1) The extent to which the organization and management plan delineates staff responsibilities and specifies staff accountability for all work tasks. (4)

(2) The extent to which the project work plan specifies tasks clearly and substantively, and presents a feasible schedule for conducting and completing all tasks on time and within budget. (4)

(3) The extent to which the application provides for (i) internally coordinating the work activities and roles of each participating entity (such as the applicant itself, the PHA, local corporations contributing funds and/or employees to be teachers or mentors, local or State financial institutions providing venture capital, State and Federal liaisons seeking to arrange waivers of regulations that hinder self-employment), and (ii) externally coordinating the proposed project with any other self-employment programs underway at the PHA site(s). (4)

(4) Adequate evidence of the applicant's sound financial management and its capacity to safeguard and wisely use Federal funds, as determined from appropriate audits or other financial statements. (3)

(e) The ability of the applicant, and any paid and volunteer/contributed staff assigned by the participating entities, to provide the technical assistance and to conduct the proposed activities effectively. (15)

(1) The credentials and recent experience of the proposed project manager relevant to: (i) Providing technical assistance for a local self-employment project; (ii) managing and supervising staff; (iii) managing, safeguarding and accounting for project funds; and (iv) completing projects on time within budget. (7)

(2) The credentials and recent experience of key staff relevent to providing technical assistance in all aspects of a local self-employment project, such as market analysis, business development, recruitment and entrepreneurial training, and acquisition of venture capital. (8)

(f) Potential for the local self-employment project to be continued beyond the period of the technical assistance grant, based upon the following. (5)

(1) The extent to which the applicant proposes commitment or targeting of additional funding (from any sources) to continue or expand the self employment project. (3) *and*

(2) The extent to which the applicant proposes a continuing local organization to sustain the project. (2) *or*

(3) Alternatively, the extent to which the applicant proposes incorporating a self-employment project for PHA residents into other ongoing small business development programs operating within the applicant's jurisdiction. (5)

II. Application Process

A. Obtaining Applications

For an application kit, contact the person identified in the section entitled "For More Information * * *" at the beginning of this NOFA.

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be received in the place designated for receipt and by the deadline date specified in the RFGA. No application received after the deadline date will be considered.

III. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the RFGA. Following is a checklist of the application content that will be specified in the RFGA.

1. Trasmittal letter.
2. OMB Standard Forms 424 (Request for Federal Assistance) and SF 424B (Non-Construction Assurances)
3. Description of PHA sites selected for local self-employment project.
4. Description of entities participating in local self-employment project.
5. Letters of participation from the entities identified in Item 4.
6. Narrative statement addressing the factors for award.
7. Organization and management plan.
8. Project budget-by-task.

B. Certifications and Exhibits

Applications must also include the following:

1. Drug-Free Workplace Certification.
2. Certification Regarding Lobbying, pursuant to section 319 of the Department of Interior Appropriations Act of 1989, generally prohibiting use of appropriated funds for lobbying.
3. Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to title IX, section 906 of the National Affordable Housing Act of 1990.
4. Statement regarding the commitment of CDBG Funds.
5. Letter designating the applicant as a technical assistance provider, if applicable.
6. Assurances.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to

determine whether or not it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has fourteen (14) calendar days from the date of written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the fourteen day cure period, HUD may disqualify the application.

This fourteen day cure period applies only to nonsubstantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Other Matters

A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Exeuctive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits participation in an effort to provide technical assistance to help residents of PHA sites become self-employed. The NOFA does not impinge upon the relationships between the Federal government, and State and local governments.

C. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being. The technical assistance to be provided by the funding under this NOFA is expected to help residents of PHA sites to become successfully self-employed, which in turn will help them become economically self-sufficient. Since the impact on the family is considered beneficial, no further review under the Order is necessary.

(The Catalog of Federal Domestic Assistance Program number is 14.227)

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 570.402.

Dated: April 23, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–10226 Filed 4–30–91; 8:45 am]

BILLING CODE 4210–29–M

federal register

Wednesday
May 1 1991

Part III

Department of Education

Rehabilitation Training Program; Request for Public Comment

DEPARTMENT OF EDUCATION

Rehabilitation Training Program

AGENCY: Department of Education.

ACTION: Notice of request for public comment on issues regarding the Rehabilitation Training Program.

SUMMARY: The Secretary of Education invites written comments from the public on issues regarding the Rehabilitation Training Program, authorized by section 304 of the Rehabilitation Act of 1973, as amended. The comments will assist in a review of the policies and practices of the Department in administering the program and will assist the Secretary in targeting fiscal year 1992 rehabilitation training funds.

DATES: Written comments must be received on or before May 31, 1991.

ADDRESSES: Written comments should be addressed to Nell C. Carney, Commissioner, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue SW., (room 3024 Switzer), Washington, DC 20202–2531.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Melia, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SE., (room 3324 Switzer), Washington, DC 20202–2649. Telephone (202) 732–1400. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: The Secretary is requesting public comment on issues regarding the Rehabilitation Training Program. The program is authorized by title III, section 304 of the Rehabilitation Act of 1973, as amended, and provides grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the costs of projects for training, traineeships, and related activities designed to assist in increasing the numbers of qualified personnel trained in providing vocational, medical, social, and psychological rehabilitation and independent living services to individuals with disabilities. Funding through the Rehabilitation Training Program supports the following areas of training:

(1) Long-Term Training.

(2) Experimental and Innovative Training.

(3) Rehabilitation Continuing Education Programs.

(4) Short-Term Training.

(5) In-Service Training.

(6) Training Interpreters for Individuals Who Are Deaf.

Section 304(c) of the Rehabilitation Act of 1973, as amended, requires the Rehabilitation Services Administration (RSA) to target rehabilitation training funds to areas of personnel shortage. Specifically, section 304(c) requires that RSA:

(1) Determine training needs of qualified personnel necessary to provide services to individuals with disabilities;

(2) Develop a long-term rehabilitation manpower plan designed to target resources on areas of personnel shortage; and

(3) Develop an annual report containing:

(i) Findings on personnel shortages;

(ii) Funding allocations by professionals discipline and program area; and

(iii) The justification for these allocations, based on personnel shortages.

On March 18, 1991, the Secretary published in the **Federal Register** a notice of public meeting (56 FR 11411) to solicit public comment regarding the Rehabilitation Training Program. This meeting is scheduled for May 9, 1991, in Washington, DC.

Issues for Public Comment

The Secretary solicits comments and suggestions regarding the Rehabilitation Training Program. Comments are especially invited on the following issues:

General Issues

Are there emerging needs or trends in practice in the vocational rehabilitation field that the Rehabilitation Training Program could address? Should RSA training funds target the initiation of new training programs or expand and continue ongoing programs?

Doctoral and Leadership Training Program Needs

Should RSA emphasize fellowships and related methods of encouraging rehabilitation education leadership development? If so, in which fields? Is this strategy appropriate for rehabilitation medicine and allied health disciplines?

Curriculum Requirements

Should RSA publish priorities that have implications for the content of curriculum? Should the level of training (certificate, associates, bachelors, masters, doctoral) be specified? Should RSA training prepare persons for "technical support" positions as well as "professional" positions?

Short-Term Training

Are short-term training needs being adequately addressed through present training programs (Regional Rehabilitation Continuing Education Programs, in-service training grants, post-employment emphasis in long-term training)? What program areas and disciplines require new approaches to short-term training?

Regional and Geographic Needs

Should training priorities be targeted for specific geographic areas? What criteria should define a regional or geographic training need? What program areas or disciplines have acute geographic or distribution needs? Do recipients of rehabilitation training tend to accept employment in the same geographic area in which training was provided?

Consolidation of Program Areas

Are there program categories that are duplicative, outdated, or unclear? Which areas should be changed? Why? Are personnel in areas such as "Rehabilitation Facility Workshop Personnel," "Vocational Evaluation and Work Adjustment," "Job Development and Placement," and "Supported Employment" interchangeable to some extent in meeting program needs?

Multiple Disabilities and Special Populations

Should priorities be developed that target specific disabilities (such as individuals who are deaf-blind) or should they be incorporated within a larger category? How should special populations based on functional capacity or diagnostic groupings such as "hard-of-hearing" and "low vision" be addressed in planning and priorities?

Purchase of Services by Rehabilitation Agencies

Can problems of inadequate availability of "vendors" be addressed in the training program? Are problems of access to services in specific program areas or disciplines (such as rehabilitation engineering) directly related to training?

Rehabilitation Counseling

Should masters degree rehabilitation counseling programs funded under this program category be limited to generalist counselors, with specialist counselors being trained under other program areas? Is training for certain

specialty areas better provided during post-employment?

Attracting Individuals With Disabilities and Culturally Diverse Populations to Rehabilitation

How can training priorities improve the access to training and increase the number of persons from special groups who participate in the training?

Americans With Disabilities Act (ADA)

Are there new training needs among rehabilitation professionals regarding the ADA?

Format for Comments

This request for comments is designed to elicit views of interested parties on the Rehabilitation Training Program and to provide the Department with knowledge of program areas that could be improved. It is not intended to express any view on any issue or to represent the intention of the Secretary to propose legislative changes in the program.

The Secretary requests that each respondent identify his or her role in rehabilitation and rehabilitation training, if any. In proposing modification or alternatives, the respondents may want to address the issues listed under Issues for Public Comment, as well as other rehabilitation training issues.

The Secretary urges each commenter to be specific regarding his or her suggestions.

Dated: April 25, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91-10211 Filed 4-30-91; 8:45 am]

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federal register

Wednesday
May 1, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-91-1484; FR-2745-F-03]

RIN 2502-AE81

Annual Rent Adjustments for Section 8 Assisted Housing; Retroactive Housing Assistance Payments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published on June 19, 1990 at 55 FR 25054 (as corrected on July 2, 1990 at 55 FR 27251). The rule implements portions of Section 801 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act), by providing the criteria under which HUD will make retroactive Housing Assistance Payments to owners of section 8 projects for which the use of comparability studies as an independent limitation on annual rent adjustments, for the period from October 1, 1979 until the effective date of this rule, resulted in the reduction of rents or the failure to increase the rents to the entire amount permitted by Annual Adjustment Factors; or to owners of section 8 projects whose contracts require them to request annual adjustments and who will certify that they did not request such adjustments because they anticipated reductions in rents. Under this rule, owners eligible for retroactive payments also have the opportunity to request a one-time determination of the contract rent upon which to base future rent adjustments.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Moderate Rehabilitation program: Madeline Hastings, Room 6130, telephone (202) 708–0420; all other programs: James Tahash, Room 6182, telephone (202) 708–3944; Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410. TDD number for the hearing- and speech-impaired (202) 708–4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB control number 2502–0042.

I. Background

This rule makes final a proposed rule published by the Department on June 19, 1990 (55 FR 25054) (as corrected on July 2, 1990 at 55 FR 27251). The rule implements section 801(a) and (d) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act). The rule provides the criteria under which HUD will make retroactive Housing Assistance Payments to owners of section 8 projects for which the use of comparability studies as an independent limitation on annual rent adjustements, for the period from October 1, 1979 until the effective date of this rule, resulted in the reduction of rents or the failure to increase the rents to the entire amount permitted by Annual Adjustment Factors; or to owners of section 8 projects whose contracts require them to request annual adjustments and who certify that they did not request adjustments because they anticipated reductions in rents. Under this rule, owners eligible for retroactive payments also have the opportunity to request a one-time determination of the contract rent upon which to base future rent adjustments.

(Section 801(c) of the Reform Act amends section 8 of the U.S. Housing Act of 1937 (1937 Act), clarifying and reaffirming HUD's ability to use comparability studies in the future as a basis for adjusting contract rents. A proposed rule implementing section 801(c) will be published at a later date. Until a final rule is published on the future use of comparability studies, section 8 contract rents will be adjusted by applying the full AAF.)

II. Public Comments

HUD received 24 public comments on the proposed rule. Two commenters supported the rule without further comment on its provisions, and another commenter stated its opposition to making retroactive payments at all. The other comments focused on particular provisons of the rule, as described below.

Applicability/Eligibility (§§ 888.301(b)–(c) and 888.401(b)–(c))

The rule, as stated in the proposed rule, applies to all projects receiving project-based section 8 assistance whose contract rents are adjusted by AAFs. These include section 8 contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); Section 515 Farmers Home Administration (Part 884); Section 202 Elderly or Handicapped Housing (Part 885); Loan Management Set-Aside (Part 886, Subpart A); Property Disposition (Part 886, Subpart C); and Moderate Rehabilitation (Part 882, Subparts D, E, and H). The proposed rule further stated, as does this final rule, that it does not apply to project-based section 8 contracts whose rents are adjusted using the budget approach (*e.g.*, some section 202 projects and Special Allocation projects), nor would it apply to tenant-based assistance programs, such as the section 8 Certificate and Housing Voucher programs.

One commenter questioned how the rule would apply to Farmers Home Administration (FmHA) projects whose rents have been established without benefit of the use of the AAFs, but rather on a budget approach basis when a rent increase has been approved by FmHA. Section 801(a) applies only where HUD limited or reduced contract rents based on a comparability study conducted by HUD. If HUD granted a rent adjustment based on the full AAF that was subsequently modified by FmHA, this rule does not apply. However, where contract rents were reduced or limited by HUD as a result of a comparability study conducted by HUD, the rule does apply.

A commenter expressed concern that owners of 80–20 split projects developed under section 221(d)(3) and (d)(4) of the National Housing Act were excluded from the rule. Certain projects insured under section 221(d)(3) and (d)(4) receive rental assistance payments for less than 100 percent of their units under various section 8 programs (*e.g.*, New Construction or Substantial Rehabilitation). The rule applies to those projects to the extent that it applies to the section 8 program under which the projects receive assistance payments and are regulated.

Another commenter questioned the rule's application to Loan Management Set-Aside (LMSA) projects using the budgeted increase approach to rent adjustments. The rule does not apply to those projects. Only projects whose rents are adjusted by the AAFs, which includes some LMSA projects, are covered by the rule; any project whose rents are adjusted by the budgeted rent increase method is not covered by this rule. This latter includes not only some LMSA projects, but also Section 202/8 projects that currently use the budgeted rent increase approach, even though those projects may have previously used the AAFs to adjust rents.

One commenter questioned whether the rule would apply only to those projects whose rents were identified as incomparable and adjusted solely on the basis of comparability studies, or would also apply to projects whose rents were identified as excessive because their profits exceeded the net profit distribution allowance. Section 801(a) is clear in its application to projects where the rent reduction or limitation was based on the results of a comparability study. If the latter project's rents were, in the end, adjusted on the basis of a comparability study, the rule will apply.

Two commenters suggested that the rule include owners with anniversary dates in September or August 1979, rather than beginning with October 1, 1979. The calculations for retroactive payments and the one-time contract rent determination will be for the period beginning October 1, 1979 and ending on the effective date of this rule. Section 801(a) specifies that the retroactive payments are for rental adjustments for fiscal year 1980. The Department interprets this to mean the Federal Government fiscal year 1980, which began October 1, 1979. Any project owner whose rents were reduced or limited as a result of a comparability study during the period beginning on October 1, 1979 and ending on the effective date of this rule is eligible for a retroactive payment, regardless of the anniversary date of the project.

Three commenters expressed a concern regarding notification to owners, and asked whether HUD would determine eligibility. They also believed the rule should provide more guidance on what HUD would accept with the certification of those owners who claim they did not request adjustments because they anticipated rent decreases.

Either HUD or the Contract Administrator will give written notice to all current owners about the retroactive payments to be made under this rule. The notification will inform owners of the eligibility requirements and request owners who believe they meet the eligibility requirements to respond with a request for the calculation within the timeframe set forth in §§ 888.310(a) and 888.410(a). (Project owners, however, who have obtained in Federal district court judgments declaring that section 801 is unconstitutional are free to disregard such notices, as well as the implementing regulations, unless those judgments are vacated.) When the calculations have been completed by HUD or the Contract Administrators, owners who responded to the initial notification will be informed of the results of the calculations.

Owners who are required to request rent adjustments and who are applying for retroactive payments and/or a one-time rent determination must submit a certification that they anticipated a rent reduction, accompanied by a statement of the basis for the belief. The statement should set forth the circumstances that led the owner to believe project rents would be reduced if a rent increase was requested.

Calculating the Total Rent Adjustment and Retroactive Payment (§ 888.305)

As set out in both the proposed rule and this final rule in § 888.305(a), HUD (or the Contract Administrator) will recalculate the total rent adjustments by applying the applicable AAF for FY 1980 to the FY 1979 contract rent minus the debt service. (This method of calculation applies to New Construction, Substantial Rehabilitation, State Finance Agencies, FmHA, Section 202, Property Disposition, and LMSA projects. Calculations for the Moderate Rehabilitation program differ in that the base rent, to which the AAF is normally applied in adjusting rents and will be applied in calculations under this rule, already has had the debt service subtracted. See § 888.405(a).) The debt service will then be added back into the formula to provide the adjusted contract rent for FY 1980. The recalculated FY 1980 contract rent (again minus debt service) will then be used to calculate the rent adjustment for the next year (FY 1981). The same process will continue for each year until the effective date of this rule. Under § 888.305(e), any special adjustments granted by HUD during the relevant time period will also be deducted from the Contract Rent before applying the AAF. (Section 888.405(e) provides the same procedure for Moderate Rehabilitation projects.)

As retroactive payment, HUD will pay the amount, if any, by which the total rent adjustments, calculated in the manner described above, exceed the total adjustments actually approved. However, no eligible project owner will be paid an amount less than 30 percent of the aggregate of the full contract rent (*i.e.*, including debt service) multiplied by the applicable AAF minus the amount of rent adjustments actually approved, for the same time period. (See §§ 888.305(b) and 888.405(b).) As set forth in §§ 888.305(c) and 888.405(c), payments will be based on the number of units occupied (including vacancies eligible for payment, in accordance with HUD regulations) during the time period for which the retroactive payments are made.

Several commenters requested that examples be included for projects with special adjustments and less than 100% occupancy. The following example calculation shows how special adjustments and occupancy rates will be used in the calculation:

Project X was given a special adjustment of $10 per-unit per-month in 1984. The per-unit per-month debt service is $250. In FY 1985, the applicable AAF was 1.064. The recalculated rent (contract rent minus debt service times AAF plus debt service) in 1984 is $520 per unit. To find the recalculated rent for 1985, the special adjustment of $10, as well as the debt service, will be subtracted before applying the AAF.

Example calculation:
($520−$250−$10)×1.064=$277
$277+$250+$10=$537 (1985 recalculated rent)

After completing all calculations for Project X, the retroactive payment, based on 100 percent occupancy is $200,764. However, the average occupancy rate for the project throughout the 10-year period was 98 percent. Under the regulations, HUD pays 80 percent of the contract rent for eligible vacant units.

Example calculation:

98 percent of $200,764 @ 100 percent=	$196,749
2 percent of $200,764 @ 80 percent=	3,212
Payment (adjusted for occupancy)	$199,961

One commenter considers the 30 percent recovery to be unfair, and is currently involved in litigation to recover the full amount. Four other commenters believe the rule should state that owners are to precluded from pursuing full payment through the courts. Project owners do not need HUD's authority to institute lawsuits. Indeed, some already have sued and obtained Federal district court judgments declaring section 801 unconstitutional. HUD believes those judgments are erroneous and has sought to appeal them. Accordingly, HUD will continue to implement section 801 with its specified limits on recovery. As stated above, owners who have obtained declaratory judgments are not bound by this regulation unless those judgments are vacated. If such a judgment is vacated, affected owners will have 60 days from the date of the order vacating the judgment to respond to the written notification that will be sent by HUD.

One commenter stated that HUD should not expect owners and managers to know the AAF rent or the rent approved and paid for all past years. HUD field offices will use project files to determine the approved rent and AFFs applied during the relevant time period.

Five commenters questioned what the "applicable AAF" is. They stated that in years when AAFs were published late, *i.e.*, after November 8, owners with anniversary dates falling between November 8 and the publication date were given the option to use the higher of the factor published prior to the anniversary date ("available factor") or subsequent to the anniversary ("applicable factor"). The commenters believe that in determining the payment HUD should continue to allow the owner to choose the factor to be applied. The final rule now provides in §§ 888.305(h) that, where factors were published late by the Department, the applicable AAF is the factor that was chosen by the owner. (This provision does not apply to Moderate Rehabilitation projects.)

Another commenter suggested that the applicable AAF should be that factor that would be applied to a rent at the level of the contract rent minus the debt service. The applicable AAF, when calculating the adjustments to the contract rent minus the debt service, is the factor that applies to the full contract rent (including the debt service). Section 801(a)(1) clearly refers to the application of "the annual adjustment factor" in calculations both including and excluding debt service. HUD interprets this to mean that the same factor is to be applied in these calculations.

With regard to subtracting the debt service before applying the AAF, two commenters were opposed. The subtraction of debt service from rents for purposes of calculating the retroactive payment is a statutory requirement included in the formula set out in section 801(a).

One commenter objected to the inclusion of the mortgage insurance premium in the definition of debt service, and another objected to the inclusion of the financial adjustment factor (FAF) for State Finance Agencies projects.

HUD disagrees that mortgage insurance premiums should not be included as part of the debt service. The definition of "debt service" contained in section 801(a) provides that mortgage insurance premiums, if any, are to be included along with principal and interest. However, HUD has determined that the FAF (or called FA in the case of some projects) should not be included as a part of the debt service. The FAF, which allowed for an increase in contract rents to cover increased interest rates on loans, will be included in the contract rent for those projects that benefited from such an adjustment. The final rule has been changed to eliminate the reference to the FAF as a part of debt service.

Two commenters believe the rule should give guidance on what constitutes debt service for projects financed with non-standard financing, such as 11(b) bond financing or non-HUD insured where credit enhancement costs take the place of the MIP. Generally, debt service should be computed the same way in projects with non-standard financing as it is in projects with standard financing. A mortgage is almost always present, and payments on that mortgage include principal and interest, which may or may not include a mortgage insurance premium. For projects with no mortgage or debt service, no subtraction will be made.

Two other commenters felt the rule should be more explicit about how to calculate the debt service, and another was concerned that Contract Administrators may not know what the debt service of a project is. HUD agrees, and the final rule now provides that the monthly debt service set forth in the original mortgage documents will be used to compute the debt service. Field Offices will compute the debt service portion of the contract rent by comparing the debt service to the spread of unit sizes included in the original HAP contract. For example, if the debt service per month is determined to be $6,480 and the original HAP contract covers 20 one-bedroom units with rents of $250 per month and 20 two-bedroom units with rents of $290 per month, the debt service for the one-bedroom units is $150 per month, while the debt service for the two-bedroom units is $174 per month. If, in some cases, the Contract Administrator or HUD does not know and cannot determine the debt service for particular projects, project owners will be asked to provide documentation of the debt service as calculated above. Owners in this category will be notified by HUD or the Contract Administrator of the need for documentation of the debt service, and will be given 30 days to respond. Exceptions to the 30-day response deadline may be granted on a case-by-case basis. If an owner does not provide the requested debt service information, the calculations necessary to make retroactive payments cannot be made.

One commenter stated that debt service should be based on the size of the unit in relation to the whole project, and another on the number of bedrooms in a unit. Debt service will be based on the percentage of total rent potential of the various unit types. Field offices will use the unit type spread set forth in the original HAP contract in determining the debt service portion of the contract rents. This is also included in the final version of the rule.

Two commenters expressed concern about project owners who had been notified by HUD that they were due back payments in accordance with section 1004 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved Nov. 8, 1988) and had not yet been paid. They do not believe that the statutory formula should apply to that payment. HUD agrees, and all payments made in accordance with the McKinney Act provision will be made separate from the retroactive payments described in this rule. The rents as restored according to the McKinney Act provisions will be used in the calculations for retroactive payments and the one-time contract rent determination under this rule.

Occupancy Rates (§§ 888.305(c) and 888.405(c))

A commenter felt that the use of an annual or monthly vacancy factor would be simpler. (The proposed rule provided that owners may submit occupancy rates for the period from October 1, 1979 to the effective date of the rule, but did not specify whether this should be an annual or monthly rate.) The final rule clarifies that HUD will accept documentation of either a monthly or annual occupancy rate.

A second commenter stated that owners should have the right to document the occupancy rate as well as the right to appeal a HUD-determined average. The commenter also questioned what constitutes an "eligible" vacancy. Other commenters questioned what HUD will use to establish an average occupancy rate. HUD is requesting that project owners document occupancy rates by submitting official monthly or annual records indicating the level of occupancy. If full documentation is not available, HUD will utilize the available data from the three years preceding the effective date of this rule. Field Offices will simply average the monthly occupancy rate figures that have been submitted to HUD. The determination is subject to correction if it is found that an error was made in the calculation of the average. Vacant units eligible for vacancy payments (80 percent of the

contract rent) are also eligible for retroactive payments. An "eligible" vacancy is a unit that meets the requirements specified in the relevant HUD regulations at 24 CFR 880.611, 881.611, 882.411, 883.712, 884.106, 885.985, 886.109, or 886.309.

Finally, a commenter stated that Section 801 does not authorize adjusting the payments for vacancies, but if HUD does so, the method used and the definition of vacancy should be included in the rule. HUD interprets section 801(a) as requiring retroactive payments to be made on the basis of rents that would have resulted if the full AAF had been applied and comparing these to the payment that was actually approved. Units vacated by eligible tenants may, in most cases, receive vacancy payments equal to only 80 percent of the contract rent. The absence of manageable documentation makes it difficult, if not impossible, to determine the exact amount of vacancy payments made. The use of an average occupancy rate ensures that owners are fully compensated for adjustments on those units receiving vacancy payments.

Special Adjustments (§§ 888.305(e) and 888.405(e))

Three commenters wrote that special adjustments should not be deducted from the contract rent before applying the AAF when recalculating the total rent adjustment and amount of retroactive payments, and five suggested that the rule be more specific on this issue. Two commenters asked whether a request for a special adjustment that was denied because of a comparability study or a "rent reasonableness" test is eligible to be included as a reduced or limited rent adjustment for purposes of eligibility for a retroactive payment. Another commenter asked whether comparability studies will be required for special adjustments after the rule becomes effective.

Special adjustments are typically granted, to the extent determined necessary by HUD, to reflect increases in expenses that have resulted from substantial general increases in property taxes, assessments, utility rates, and utilities not covered by regulated rates, and that are not adequately compensated for by the AAFs. The amount approved for the special adjustment is a fixed amount and, as such, HUD believes should not be adjusted each year by the AAF. For example, a special adjustment of $10 per unit per month, granted because of an increase in taxes, should not be adjusted each year, because the tax itself does not increase accordingly. Future AAFs for the area should account for this tax with higher rent adjustments.

A request for a special adjustment that was denied because of a comparability study is not eligible for inclusion in the retroactive payment. Section 801(a) is clear that retroactive payments are to be made only in cases where the use of a comparability study acted as a independent limitation on the amount of rental adjustment that would have resulted from the application of an AAF.

A rule for the future conduct of comparability studies, as authorized by section 801(c), has not been developed. HUD will publish a proposed rule implementing section 801(c) for public comment at a later date. No comparability studies will be conducted until a final rule implementing section 801(c) has been published.

60-day Deadline for Request for Payment (§§ 888.310(a) and 888.410(a))

One commenter believes that the 60 days allowed after notice of eligibility to request payment or a rent determination is an unfair limitation. The commenter is involved in litigation for 100 percent recovery, and stated that if the suit is unsuccessful, the 60-day period would be over. HUD believes that the 60-day deadline is necessary so that field offices can carry out the research and calculations for all requests at the same time for two reasons. First, the complexity of the process requires that field offices focus on the collection of data and the accuracy of computations at one time. Secondly, section 801(b) requires that HUD make payments within a certain time frame. However, owners involved in litigation filed before the effective date of this rule will be given 60 days from the date of a final judgment in those suits in which to request retroactive payments under this rule.

Eight commenters believe that HUD should also have a deadline for making the payments or notifying owners of the amount due. (The rule does not give a deadline for HUD, but provides that payments will be made over a three-year period as funds are appropriated. The preamble to the proposed rule stated that owners will be notified by HUD of the amount of the payment or the contract rent determination "in as timely a manner as possible.") The calculations required under this rule are complex and time- and staff-intensive. Because the Department cannot predict with any degree of accurancy the number of respondents who will request payments and rent determinations, it cannot estimate the amount of time required to complete the processing. However, the Department is committed to carry out its obligations under the legislation and this rule in a timely manner.

Miscellaneous Comments With Regard to Payment

One commenter asked whether owners who are to receive large sums will be paid interest on the unpaid balance, since the rule indicates the payments will be made over a three-year period as appropriations become available. The Department does not interpret any provision in section 801 as authorizing the payment of interest.

A commenter asked whether any consideration had been given to the possibility that funds would not be appropriated for the payments, and another urged HUD to include a request for funds for the payments in its appropriations requests to Congress. Section 801(b) specifies that the retroactive payments must be made from funds appropriated by Congress for this purpose. HUD requested and Congress appropriated $70 million for payments in 1991. While the Department has no control over the appropriations process, it intends to request the funds necessary to comply with Section 801(b) in its 1992 and 1993 budget submissions.

Transfer of Ownership (§§ 888.310(d) and 888.410(d))

A commenter suggested that the rule more clearly define the postion of HUD if owners disagree or protest a proportionate award. The commenter asked where HUD's financial responsibility would end and, in the event of a dispute, what would govern. The Department will not become involved in any dispute arising between past and present owners over rights to the payments. As the rule states, the payment will not be made until the current owner either certifies that it is entitled to the entire amount or provides documentation of an agreement between it and the past owner regarding the proportinate share to which each is entitled.

Use of Payment (§ 888.315(a))

One commenter proposed that Section 202/8 projects be allowed to deposit 50 percent of the payment into a special account set up to provide supportive services for tenants who are aging in place or the frail elderly. The commenter suggested that those projects need greater flexibility to use the reserve for replacements and residual receipts to finance retrofit or supportive services. The commenter stated that it understood that residual receipts in excess of the

amount necessary for emergency debt servicing may be used for "amenities consistent with the program under which the project was developed," and urged HUD to recognize the need to use excess reserves for meeting the needs of the frail elderly in assisted housing.

The retroactive payments, as contemplated by section 801, represent past housing assistance payments. Non-profit sponsors who receive retroactive payments for Section 202/8 projects must deposit those payments into the project accounts appropriate for housing assistance payments, as required by current HUD regulations, and the payments may then be used in a manner consistent with the regulations or contract. While the Department understands and appreciates the responsibility sponsors feel toward meeting the special needs of their tenants, it believes that this rule is not the appropriate place for addressing these suggestions.

Reserve for Replacements (§ 888.315(b))

Several commenters objected to the proposed rule's treatment of the percentage of the retroactive payment to be paid into the reserve for replacements account. The commenters all stated that the deposit should not vary according to the amount of the payment, but rather that the reserve deposit should be increased by the same percentage as the rent potential is increased. For example, if the percentage of the rent potential that must be deposited in the reserve for replacement account is 3 percent, then 3 percent of the retroactive payment must be deposited in the account. HUD agrees with the commenters. Although the example used in the preamble of the proposed rule was incorrect, the provision dealing with this issue in the rule text requires no change.

Physical Inspection of Projects (§§ 888.315(c) and 415(c))

One commenter questioned the appropriateness of requiring owners to correct deficiencies before they may receive the payment, since the deficiency is a present liability, and the payment represents past income. The commenter also argued that deposits to the Reserve for Replacement Account, combined with routine maintenance, are sufficient for compliance.

HUD does not agree that the retroactive payments should not be utilized to address current physical deficiencies. The payments are project income and must be used as such to address physical deficiencies and ensure proper maintenance of the project. If no physical deficiencies have been identified, then the requisite deposit to the Reserve for Replacement Account, accompanied by appropriate routine maintenance, is sufficient for compliance with the requirement that physical deficiencies be resolved prior to the inclusion of the payments in the surplus cash computation.

Two commenters suggested that the rule be more specific on what will be expected to satisfy HUD in the correction of deficiencies. According to HUD regulations at 24 CFR 880.601(b), 881.601(b), 882.516(a), 883.702(b), 884.217(a), 886.123(a), and 886.323(a), owners are responsible for the maintenance and repair of the property. Deficiencies, if any, included on the current physical inspection performed by the mortgage, or by HUD or the Contract Administrator if a current mortgagee inspection is not present, must be addressed. All deficiencies, whether marked for immediate repair or repair within one year, must be addressed either through repair or through submitting a plan for repair. HUD will follow current instructions regarding acceptable corrections and plans for corrections.

One commenter suggested that owners should be required to repair only where the deficiency is of such serious nature that it clearly and directly affects habitability. The commenter also noted that payments may be withheld from surplus cash distribution only after proper notification to the owner and in accordance with current HUD requirements and procedures, and, if the owner fails to respond or to exercise due diligence in correcting the deficiencies, sanctions may be imposed. However, the commenter pointed out, the sanctions listed do not include withholding of distribution.

The Department disagrees with both of these assertions. First, section 8 of the 1937 Act requires that projects must be decent, safe, and sanitary to be eligible for assistance, not merely habitable. Secondly, HUD regulations for insured and state agency projects specify the requirements that must be met for an owner to take a distribution from surplus cash. Based on these sections, including §§ 880.205, 881.205, and 883.306, retroactive payments will not be made available for distribution until deficiencies noted in the physical inspection report have been answered. With regard to Moderate Rehabilitation projects, § 882.516(c) clearly states that abatement of housing assistance payments is a remedy that may be exercised when a project is not maintained in decent, safe and sanitary condition.

One-time Contract Rent Determination (§§ 888.320 and 888.420)

Several comments were submitted on the provision in the rule on the one-time contract rent determination. Some commenters seemed confused about whether an owner had to choose between requesting the rent determination or the payments, or whether an owner not eligible for retroactive payments was required to request a rent determination. An owner must meet the eligibility requirements described in §§ 888.301(c) or 888.401(c) to be eligible for either retroactive payments or a one-time rent determination. An owner may request both a retroactive payment and a one-time contract rent determination, or may choose to request either the payment or the rent determination.

One commenter stated that the rule should provide that the payments and the rent determination will be effective on the first anniversary date following the effective date of the rule regardless of the date the calculation is completed.

Section 801(a)(1) specifies that the calculation with regard to the retroactive payments should cover the period from 1980 "until regulations implementing this section take effect." Thus, HUD is precluded from extending the calculation for the retroactive payments beyond the effective date of this final rule.

With regard to the effective date of any increased rent as a result of the one-time contract rent determination, the new rent will become effective on the effective date of this rule. The proposed rule provided for the new rents to become effective on the first of the month following notification to the owners. HUD has revisited this issue, and has changed the final rule to provide that the rents will be effective on the effective date of the rule. Because there will be lag-time between the effective date of the rule and the one-time rent determination, it will be necessary for the HAP payments covering that time to be made retroactively.

Finally, one commenter asked whether HUD Form 92458 (Rental Schedule) may be used where there is no formal HAP contract amendment from which to obtain the currently approved rent. HUD agrees that this form may serve as documentation if the owner or HUD cannot locate the formal amendment to the HAP contract.

Appeals From HUD Determination

Three commenters stated that the rule should provide for an appeal process for

owners who disagree with HUD's determination of the amount due for retroactive payments or the new contract rent. Since the retroactive payments represent past housing assistance payments for contract rents, any challenges to a determination by HUD (or the PHA, in the case of Moderate Rehabilitation projects) under this rule may be appealed in the same manner an owner would appeal any contract rent determination. Decisions at the Regional Office level will be considered a final administrative decision.

Reviews of Initial Mod Rehab Rents (§ 888.415(b))

Four commenters objected to the provision of the rule providing that, before calculating the amount of a retroactive payment, the PHA will review whether rents in Mod Rehab projects were excessive when initially set, if directed by HUD. The commenters stated that any modification would violate the contract where an owner has relied on the initial approval, and could result in a serious adverse effect. The Department believes that a review of initial contract rents is consistent with the terms of the HAP contract, which explicitly authorizes a change of contract rents to correct errors in the computation of the initial rents. Further, the contract provides that rents are subject to post-audit and change in accordance with HUD requirements, including the correction of errors in computation and adherence to HUD procedures. The contention that reviewing and modifying rents, if appropriate, in connection with the calculation of retroactive payments is in violation of the contract is without legal basis.

Present or Future Use of Comparability Studies

A PHA submitted a comment asking whether the rule eliminates the use of comparability studies after its effective date, or could studies still be used as a basis to deny or limit rent adjustments. Field offices and PHAs (as Contract Administrators) were instructed by HUD to discontinue all comparability studies for purposes of limiting AAFs, effective December 15, 1989, the date of enactment of the HUD Reform Act. A project for which a comparability study was conducted after that date that resulted in a reduction or limitation of AAFs is eligible for retroactive payments and a one-time determination under this rule. Section 801(c) of the Reform Act, which amends section 8(c)(2)(C) of the 1937 Act by clarifying and reaffirming HUD's authority to conduct comparability studies for use with AAFs, must be implemented by rulemaking before studies may be conducted in the future.

III. Other Matters

The information collection requirements contained in this rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and assigned OMB control number 2502–0042.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An environmental assessment is unnecessary, since statutorily required establishment and review of rent schedules that do not constitute a development decision affecting the physical condition of specific project areas or building sites is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule will not have a potential significant impact on the formation, maintenance, and general well-being of the family and, thus, is not subject to review under that Order. Adjustments in contract rents do not affect the amount of rent a tenant family in Section 8 assisted housing is required to pay, which is an amount based on the tenant family's income.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order. The rule would affect the amount of housing assistance payments paid by HUD to owners of Section 8 assisted projects.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule governs the procedures under which HUD will make retroactive housing assistance payments to owners of Section 8 assisted projects.

This rule was listed as item number 1309 in the Department's Semiannual Agenda of Regulations published at 56 FR 17360, 17390 on April 22, 1991, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 888

Grant programs; housing and community development, Rent subsidies.

For the reasons stated in the preamble, part 888 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 888 continues to read as follows:

Authority: Secs. 5 and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In part 888, the heading for part 888 and for subpart B is revised, and subparts C and D are added, to read as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

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Subpart B—Contract Rent Annual Adjustment Factors

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Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

Sec.

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

Sec.

Sec.
888.415 Restrictions on retroactive payments.
888.420 One-time Contract Rent determination.
* * * * *

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

(c) *Occupancy rates.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.609(b), 881.609(b), 883.710(b), 884.109(c), 886.112(c), or 886.312(c) during the time period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(g) *Debt service.* (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.

(2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.

(3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as approved by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.

(h) *Applicable AAF.* The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor, the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502-0042)

§ 888.310 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* HUD (or the Contract Administrator)

will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979, to May 31, 1991, if available.

(2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a **Federal Register** notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners who request retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.315 Restrictions on retroactive payments.

(a) Restrictions on distribution of surplus cash. Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.

(b) Replacement reserve. Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) Physical condition of HUD-insured or State-financed projects. If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

§ 888.320 One-time Contract Rent determination.

(a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by HUD (or the Contract Administrator); or

(2) An amount equal to the applicable AAF multipled by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.

(b) Currently approved rent. The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505–0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

§ 888.401 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.405 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the

procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section exceeds the rent adjustments actually approved for the same time period.

(c) *Occupancy rate.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 882.411, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting a retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.410 Notice of eligibility requirements or retroactive payments.

(a) *Notice of eligibility requirements.* PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under §§ 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.

(2) Owners claiming eligibility under § 888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a **Federal Register** Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) *Physical condition of projects.* If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§ 888.420 One-time Contract Rent determination.

(a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in § 888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determinaton must be made when submitting a request for retroactive payments, as described in § 888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determinaton, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under § 888.405(a).

(b) Currently approved rent. The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) Effective date of new Contract Rent. The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502–0042)

Dated: April 12, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–10222 Filed 4–30–91; 8:45 am]

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federal register

Wednesday
May 1, 1991

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard); Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control, Custody, Care, Treatment and Instruction of Inmates; Literacy Program (GED Standard)

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Adult Basic Education by renaming it the Literacy Program and by raising the current 8.0 academic grade level literacy standard to a General Educational Development (GED) or high school diploma level. This amendment is being made in recognition of the higher standards of literacy required in the workplace.

EFFECTIVE DATE: May 1, 1991.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on the Adult Basic Education (ABE) program. The existing regulations on the ABE program were in compliance with the mandatory functional literacy requirement in section 2906 of the Crime Control Act of 1990 (Pub. L. 101–647), which defines functional literacy as an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test, functional competency or literacy on a nationally recognized criterion-referenced test, or a combination thereof. On June 13, 1990 (55 FR 24064), a notice was published in the **Federal Register** announcing a pilot program in selected Bureau institutions to assess the merits of raising the literacy standard from an 8.0 academic grade level to a GED or high school diploma level. A proposed rule on the subject was then published in the **Federal Register** January 17, 1991 (56 FR 1898).

The Bureau received public comment from a state education department. The commenter, who approved of the provisions in § 544.70 which require inmates to attend instruction leading to a GED diploma for 120 days, recommended that the length of a session be specified to ensure that one inmate could not receive considerably less instruction than another in 120 days and still be prohibited from promotion if he or she did not earn a GED diploma during the period. The Bureau believes that it would be inappropriate to provide specifics on the length of a session in the regulation. This information is best addressed in the implementing instructions to staff on the Bureau's rule on Education, Training and Lesiure-Time Program Standards (28 CFR part 544, subpart I). The individual institution may then allocate its educational resources (e.g., use of tutors and computer-assisted instruction in addition to classroom instruction) in the most appropriate manner so as to best afford the inmate the opportunity to complete the program successfully within the 120 days (as noted in § 544.73(c), days absent are excluded from the 120 day period). Additionally, the Bureau conducts program reviews of the educational activities in individual institutions in order to ensure their quality and consistency.

The commenter also endorsed the policy of encouraging inmates who do not receive a GED diploma in 120 days or less to continue to receive instruction. The commenter, however, believed that some inmates, particularly those who may have a high school education in a native country but who have limited proficiency in English, may be able to perform the duties of work postions above grade 4. The commenter recommended that the proposed exception in § 544.74(a) allowing for employment of inmates who do not meet the literacy standard be broadened to include such inmates. As provided in § 544.70, an inmate who does not have a verified General Educational Development (GED) or high school diploma is required to attend the literacy program. In its implementing instructions to staff, the Bureau confirms that a non-English speaking inmate who has a verified high school diploma or equivalent in his or her native language meets the GED literacy standard, and is consequently eligible for promotion above pay grade 4 UNICOR and Inmate Performance Pay assignments. Section 544.74(a) also allows the Warden to exempt inmates from the requirement for good cause. Further concerns on inmates with limited proficiency in English will be addressed in a separate rulemaking under development by the Bureau on its English as a Second Language program.

In light of the above comment and response, the Bureau is adopting this proposed rule as a final rule with one change. As proposed, paragraph (b) of § 544.73 specified that the literacy coordinator place documentation of interviews in the Literacy Program Record in the inmate's education file. In this final rule, paragraph (b) specifies that the literacy coordinator place this documentation in the inmate's record. This change is administrative in nature, and does not change the intent of the rule. Members of the public may submit further comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**. Upon consideration of the nature of the public comment on the proposed rule and in order to allow the Bureau to implement these changes during the beginning of the second half of the educational program year, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring a full thirty day delay in effective date.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 444

Prisoners.

Dated: April 24, 1991.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), part 544 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

1. The authority citation for 28 CFR 544 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart H of part 544, consisting of §§ 544.70 through 544.76, is revised to read as follows:

Subpart H—Literacy Program

Sec.

Sec.

Subpart H—Literacy Program

§ 554.70 Purpose and scope.

An inmate confined in a federal institution who does not have a verified General Education Development (GED) or high school diploma is required to attend an adult literacy program for a minimum of 120 calendar days or until a GED is achieved, whichever occurs first. The Warden shall establish incentives to encourage an inmate to complete the literacy program.

§ 544.71 Applicability: Who must attend the literacy program.

(a) All inmates in federal institutions must attend the literacy program except:

(1) Pretrial inmates;

(2) Inmates committed for purpose of study and observation under the provisions of 18 U.S.C. 4205(c) or, effective November 1, 1987, 18 U.S.C. 3552(b);

(3) Sentenced aliens with a deportation detainer;

(4) Other inmates who, for good cause, the Warden may excuse from attending the literacy program.

(b) Staff shall document in the inmate's education file and central file the specific reasons for not requiring the inmate to participate in the literacy program.

§ 544.72 Applicability: Who may be promoted.

(a) An inmate must show prior attainment of a GED or high school diploma in order to be promoted above grade 4 UNICOR and Inmate Performance Pay (IPP) assignments except:

(1) An inmate already in a UNICOR or IPP position above pay grade 4 at the time of implementation of this rule (May 1, 1991), who does not have a GED or a high school diploma but was previously approved for promotion above grade 4.

(2) Other inmates who, for good cause, the Warden may determine are exempt from completing the academic requirements for promotion above grade 4. An inmate who is exempted from attending the literacy program under § 544.71(a) ordinarily may not be promoted above the fourth grade of compensation unless he or she meets the GED requirement.

(b) staff shall document in the inmate's education file and central file the specific reasons for allowing pay promotion exemptions.

§ 544.73 Procedures.

(a) The Warden at each federal institution shall ensure that an inmate who does not have a verified GED or high school diploma is enrolled in the literacy program.

(b) The Warden or designee shall assign to an education staff member the responsibility to coordinate the institution's literacy program. The literacy coordinator or designated education staff shall meet initially with the inmate for the purpose of enrolling the inmate in the literacy program. Subsequently, the literacy coordinator or designated education staff shall formally interview each inmate involved in the literacy program at least once every 30 days during the mandatory 120 day period, to review and record the inmate's progress in this program. The literacy coordinator shall place documentation of these interviews in the inmate's record.

(c) At the end of 120 calendar days, excluding sick time, furloughs, or other absences from scheduled classes, the unit team shall meet with the inmate to encourage continued participation in the literacy program until the inmate attains a GED or high school diploma. At this time, the inmate may elect not to continue in the literacy program, and no disciplinary action will be taken. The inmate may not discontinue this program where participation is mandated by statute.

§ 544.74 Federal Prison Industries (UNICOR) and Inmate Performance Pay (IPP) Assignments.

(a) Inmates who wish to secure a UNICOR or IPP work assignment above grade 4 of compensation or who wish to work in non-graded incentive pay (piece-rate) positions must be able to demonstrate the prior obtainment of a GED or high school diploma. However, if labor force needs require, inmates who do not meet the literacy requirements may be employed in UNICOR incentive pay positions if they are simultaneously enrolled in a literacy or related program, and provided they are found to be progressing at an acceptable level as defined by the supervisor of education. Failure to maintain satisfactory progress shall result in termination of UNICOR incentive pay employment. Local UNICOR management may elect to place the terminated piece-rate employee in an hourly rated 4th grade position. The Warden may, for good cause, exempt inmates from this requirement.

(b) An inmate may be assigned to the fourth grade of compensation in a UNICOR or IPP work assignment contingent on the inmate's enrollment, and satisfactory participation, in the literacy program. Failure of an inmate to make adequate progress in the literacy program may be used as the basis to remove the inmate from the UNICOR or IPP work assignment.

§ 544.75 Incentives.

The Warden shall establish a system of incentives to encourage an inmate to obtain a GED.

§ 544.76 Disciplinary action.

As with other mandatory programs, such as work assignments, staff may take disciplinary action against an inmate whose academic level is below GED or high school level when that inmate refuses to enroll in, or to complete, the mandatory 120 calendar days literacy program.

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Wednesday
May 1, 1991

Part VI

Department of Education; National Science Foundation

National Science Scholars Program; Fina' Selection Criteria; Notice

DEPARTMENT OF EDUCATION

National Science Foundation

National Science Scholars Program

AGENCY: Department of Education and National Science Foundation.

ACTION: Notice of Final Selection Criteria for Implementing the National Science Scholars Program in Fiscal Year 1991.

SUMMARY: The Secretary and Director establish the selection criteria necessary to implement the newly enacted National Science Scholars Program (NSSP) in fiscal year 1991 in accordance with the provisions of the NSSP authorizing legislation in title IV, part A, of the Excellence in Mathematics, Science and Engineering Education Act of 1990, Public Law 101–589, 20 U.S.C. 5381 *et seq.* In addition to the program statute, the General Education Provisions Act, and the selection criteria in this notice, in fiscal year 1991, the Secretary will apply the following regulations to the NSSP: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subparts C and D, and §§ 75.580–75.592), 77, 79, 81, 82, 85, and 86. For the purpose of the NSSP, the terms "grantee" and "recipient," as used in EDGAR, mean an institution of higher education that administers a NSSP award received on behalf of a NSSP Scholar. The Secretary plans to publish a notice of proposed rulemaking for the program that will contain the selection criteria for future fiscal years.

EFFECTIVE DATE: These criteria take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. These selection criteria will become effective after the information collection requirements contained in this notice have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these criteria, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred H. Sellers, Chief, State Student Incentive Grant Section (room 4018, ROB #3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5447, telephone (202) 708–4607. Deaf and hearing impaired individuals may call: the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC, 202 area code, telephone 708–9300) between 8 a.m., and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Under the National Science Scholars Program, the Secretary is authorized to award scholarships to students for the undergraduate study of the life, physical, or computer sciences, mathematics, or engineering. The program's purpose is to recognize student excellence and achievement in the physical, life, and computer sciences, mathematics, and engineering by providing scholarships to meritorious graduating high school students to encourage and enable them to continue their studies at the postsecondary level. Once implemented, the program will strengthen the leadership of the United States in the sciences, mathematics, and engineering fields by attracting both men and women into these fields and by encouraging them to pursue teaching careers in these areas. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study at institutions of higher education to students who: (1) Are graduating from high school, (2) are nominated by State nominating committees, and (3) are selected by the President. A National Science Scholar who maintains eligibility may receive additional awards in subsequent years in order to complete his or her undergraduate course of study. Actual award amounts will depend on the availability of appropriated funds, the number of States that elect to participate, and the statutory prohibition against an award exceeding a scholar's cost of attendance. In the Excellence in Mathematics, Science and Engineering Education Act of 1990 (Pub. L. 101–589), Congress authorized $4.5 million for the NSSP; and in the Department of Education Appropriations Act, 1991 Pub. L. 101–517), Congress appropriated $976,000. Section 603(b)(4) of the Act requires that the President announce the selection of scholars prior to January 1 of each fiscal year. However, the enactment date of the Act and the statutorily required procedures for establishing criteria and nominating and selecting recipients precluded announcing the names of scholars prior to January 1 for fiscal year 1991.

A State nominating committee must use the selection criteria in this notice, developed by the Director of the National Science Foundation (the Director of the NSF) in the conjunction with the Secretary, to select and prioritize nominees from among those eligible students who submit applications for NSSP scholarships. The eligibility criterion in section 604(a)(3) of the statute requires a demonstration by each applicant of outstanding achievement in the scholarships disciplines at the secondary level. Moreover, under these selection criteria a successful applicant must have clearly demonstrated in his or her application that he or she has the potential and motivation to complete a postsecondary education at a high level of academic achievement in one of the scholarship disciplines. However, through the publication of these selection criteria, the Secretary and Director seek to encourage and attract to a career in the sciences, mathematics, or engineering, not only those individuals who have excelled specifically in the scholarship disciplines during their secondary education and are already committed to a career in the scholarship disciplines, but also those academically superior individuals who have not yet decided on the direction of their postsecondary education and professional career. The Secretary and the Director believe that selection criteria that place primary or exclusive emphasis on evidence of outstanding academic achievement in the scholarship disciplines would not only be redundant, in light of the eligibility requirement in section 604(a)(3), but might also discourage an otherwise excellent student from considering a career in the sciences, mathematics, or engineering and applying for a NSSP scholarship. Under the application scoring methodology below, the Secretary and the Director direct the State mominating committee to review, and score accordingly, those applications where a student provides clear and specific evidence that demonstrates his or her potential and motivation to succeed at a high level of academic achievement at the postsecondary level in the sciences, mathematics, and engineering.

Under the statute authorizing the National Science Scholars Program, the nominating committee of each participating State must implement procedures for the nomination of students who, in addition to meeting the specific eligibility criteria in section 604(a) of the statute: (1) Demonstrate the potential to successfully complete a postsecondary program in the physical, life or computer sciences, mathematics, or engineering academic disciplines; and (2) demonstrate the motivation to pursue a career in the physical, life, or computer sciences, mathematics, or engineering. As provided in the authorizing legislation, State nominating committees may develop a selection process that serves to promote participation by minorities and persons

with disabilities and gives consideration to the financial need of an applicant.

Each State nominating committee must establish operating procedures governing the scholarship nomination process that include: (1) Procedures for the dissemination of program information and application materials to the State's public and private secondary schools; and (2) the establishment of internal State administrative procedures for the timely submission, processing, and review of applications submitted by eligible students. After completing their review of the applications, State nominating committee must submit for consideration the names and pertinent information for each of at least four nominees from each congressional district. The Act provides that at least one half of the nominees from each congressional district must be female, and all of the nominees must be ranked in order of priority within each congressional district. The Department will accept nominations on behalf of the President, and, therefore, State nominating committees should send their nominations to the following address: National Science Scholars Program, United States Department of Education, Office of Student Financial Assistance, ROB–3, room 4651, 400 Maryland Avenue, SW. Washington, DC 20202–5453.

Through consultation with appropriate Presidential staff, the Secretary and the Director will provide their selection recommendation to the President. The President will then select two scholarship recipients from each congressional district.

The Secretary of Education and the Director of the National Science Foundation announce the following selection criteria for use by each nominating committee in the selection of nominees for fiscal year 1991 National Science Scholar Awards:

Selection Criteria

(a)(1) The State nominating committee shall use the following equally weighted selection criteria to evaluate and rate student applications under this scholarship progam.

(2) In selecting student nominees, the nominating committee shall score each of the following criteria on each application using this scale: 5 (truly exceptional), 4 (outstanding), 3 (excellent), 2 (good), 1 (fair). Each applicant may receive a maximum of 25 points.

(b) *The criteria.*—(1) *Evidence of exceptional academic achievement at the secondary level.* (i) The nominating committee shall review each student application and rate the student's overall academic achievement at the secondary level by considering high school class rank and grades and either the composite score on the ACT Assessment or the sum of the student's verbal and quantitative scores on the Scholastic Aptitude Test.

(ii) For student applicants who are earning high school equivalency diplomas in lieu of graduating from high school, the nominating committee shall review and rate the applicant's score on the high school equivalency exam.

(2) *Evidence of exceptional nonacedemic accomplishment in extracurricular areas and in the physical, life or computer sciences, mathematics, or engineering.* The nominating committee shall review each application and rate the student's achievement in activities in areas such as community service, leadership, and artistic and athletic performance along with achievement outside the classroom in the sciences, mathematics, and engineering.

(3) *Letters of reference.* The nominating committee shall rate letters of reference written by three individuals chosen by the applicant and determine the degree to which these letters reflect the applicant's qualifications for a National Science Scholarship, based upon relevant factors such as: (i) The author's qualification to provide a recommendation for the particular applicant; (ii) the extent to which each letter of reference describes the applicant's motivation and potential to pursue a career in the physical, life, or computer sciences, mathematics, or engineering; or (iii) the extent to which each letter of reference describes the applicant's overall potential and abilities.

(4) *Student essay.* The nominating committee shall review each application and rate a student essay or personal statement, of 500 words or less, on a topic chosen by the student and deemed by the student to be of interest to the nominating committee. The essay must reflect the student's motivation to pursue a career in the physical, life, or computer sciences, mathematics, or engineering, and otherwise be of relevance to the committee's determination of the student's qualification for a National Science Scholarship.

(5) *Meeting the purposes of the authorizing statute.* The nominating committee shall rate each student's application to determine how well it meets the purposes of the National Science Scholars Program as discussed in this notice and as set forth in section 601(a) of the NSSP statute.

Paperwork Reduction Act of 1980

The use of these criteria creates an information collection requirement. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these criteria to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)).

Annual public reporting burden for the two collections of information required in this notice are estimated as follows:

1. Applicant responses to selection criteria are estimated to average 16 hours per applicant response for 15,435 respondents, including the time for reviewing instructions and selection criteria, requesting the required information, writing the essay, and reviewing and transmitting the collection of information.

2. State nominating committee submission of nominations to the President are estimated to average 40 hours to review an estimated 35 applications from each congressional district per 441 congressional districts and other eligible participating entities, for a total of 17,640 hours if all 56 State respondents participate. The estimated hours include the time for reviewing and rating student applications, prioritizing nominees, and transmitting the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements contained in this notice should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington DC, 20503; Attention: Daniel Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an integovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the

opportunity to comment on proposed regulations. In order to implement fully the National Science Scholars Program in fiscal year 1992 and future years, the Secretary will soon publish a Notice of Proposed Rulemaking. However, for the following reasons, the Secretary finds that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment on the selection criteria for the National Science Scholars Program for scholarship awards in fiscal year 1991.

The Excellence in Mathematics, Science and Engineering Education Act of 1990 authorizing the National Science Scholars Program was enacted on November 16, 1990. Following the enactment, pursuant to section 603(a)(1) of the statute, the Director of the National Science Foundation expedited the development of program selection criteria and provided these selection criteria to the Secretary of Education on March 14, 1991. Due to the recent date of enactment of this legislation and the required procedures for establishing criteria and nominating and selecting recipients, the January 1 statutory due date for the President's selection of National Science Scholars was not met for fiscal year 1991. The Secretary is waiving public comment on this notice of final selection criteria in order that scholarship recipients may be properly nominated and scholarship awards made for fiscal year 1991 as quickly as possible.

Without prompt publication of these final selection criteria, the States cannot impart to interested graduating high school students the information they need in order to submit applications and compete for National Science scholarships in fiscal year 1991. Similarly, without publication of these final selection criteria, State nominating committees cannot begin the process of soliciting student applications, reviewing these applications, and rating them in order to provide nominations for fiscal year 1991 scholarships to the President. Scholars must be selected soon so that they can plan for the coming academic year. Moreover, in order to avoid the lapse of funds appropriated for the NSSP for fiscal year 1991, the President must announce scholarship recipients and the Secretary must obligate funds to institutions of higher education on behalf of the recipients by September 30, 1991, the end of fiscal year 1991. Accordingly, the Secretary has determined that there is good cause under 5 U.S.C. 553(b)(B) to waive public comment prior to the publication of this notice of selection criteria for fiscal year 1991 on the grounds that doing otherwise would be impracticable and contrary to the public interest.

(Catalog of Federal Domestic Assistance No. 84.242, National Science Scholars Program)

Authority: 20 U.S.C. 5381 *et seq.*

Dated: April 10, 1991.

Dr. Walter E. Massey,

Director, National Science Foundation.

Dated: April 3, 1991.

Lamar Alexander,

Secretary of Education.

[FR. Doc. 91–10332 Filed 4–30–91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
May 1, 1991

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of St. Louis Terminal Control Area, MO; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-3]

Alteration of the St. Louis Terminal Control Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the St. Louis, MO, Terminal Control Area (TCA). This amendment maintains the altitude of the upper limit of the TCA at 8,000 above feet mean sea level (MSL) and redefines several existing subareas to improve air traffic procedures and simplify visual flight rules (VFR) operations outside the TCA. The primary aim of this modification to the TCA is to improve the degree of safety while providing the most efficient use of the terminal airspace. This action improves the flow of traffic and increases safety in the St. Louis terminal area.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the St. Louis, MO, TCA (55 FR 37834). The proposal cited the inability of the present TCA airspace configuration to accommodate the volume of traffic that had increased from 337,000 in 1980 to 426,000 in 1989. As of December 31, 1989, the number of enplaned passengers had risen to 10 million. Projections indicate that by the year 2000 annual operations will have reached 508,000. To accommodate the increased traffic, aircraft have been routinely vectored beyond the boundaries of the current TCA. The proposed amendment maintained the altitude of the upper limit of the TCA at 8,000 feet MSL nad redefined several existing subareas to improve air traffic procedures and to simplify VFR operations outside the TCA.

On December 7, 1990, the FAA published a supplemental Notice of Proposed Rulemaking (NPRM) to lower the altitude of the approach/departure wings of Area F of the St. Louis TCA from 5,000 feet MSL to 4,500 feet MSL (55 FR 50656). The proposed amendment was warranted because some aircraft, upon reaching the lateral boundaries, could not reach 5,000 feet. To ensure that those aircraft would be within Area F in the TCA, the floor was lowered to 4,500 feet. Section 71.401 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

User Group Participation

The St. Louis TCA modification is being adopted after discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to provide that the TCA is effective for all users by identifying any adjustments or additional modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can be identified and corrective action taken when necessary.

The TCA configuration established in the final rule has been developed through substantial public participation. Initially, informal airspace meetings were held in the St. Louis area to allow local aviation interests and airspace users an opportunity to provide input for the design of this TCA modification. Technical assistance and support were provided by St. Louis air traffic control (ATC) personnel.

After those meetings and further coordination with the St. Louis Airspace Users Advisory Committee representatives, a modified TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed for adoption. An additional opportunity for public comment was granted because of minor changes made to the proposed description of the TCA.

Discussion of Comments

The FAA received 15 comments pertaining to the St. Louis TCA proposal. All comments were carefully studied before developing the final design of the modified TCA. The FAA believes that the final TCA design best meets ATC and users' requirements and promotes the safe and efficient use of available airspace.

All 15 commenters, including the Aircraft Owners and Pilots Association (AOPA) and the Airline Pilots Association (ALPA), concurred with the design of the modified TCA and added the following recommendations:

AOPA recommended using the 175° radial in lieu of the 180° radial in Area B. It stated that no basis exists for using the 180° radial and that airspace could be used outside the TCA.

The FAA notes that the 180° radial, as mentioned in the description of Area B of the St. Louis TCA, is the true radial. When printed on navigational charts, the 180° true radial will be shown as the 175° magnetic radial.

In addition, AOPA, as well as the Greater St. Louis Flight Instructors Association and ALPA, recommended the addition of a very high frequency omnidirectional radio range and distance measuring equipment (VOR/DME) facility on the surface of the Lambert-St. Louis International Airport. The FAA has included provisions for a terminal VOR/DME facility for the Lambert-St. Louis International Airport in the fiscal year 1992 budget.

ALPA recommended that the St. Louis TCA be established up to 10,000 feet MSL to allow additional airspace for positive separation from non-Mode C aircraft.

The FAA agreed with the users committee members to establish the upper limits of the TCA at 8,000 feet MSL. General aviation pilots concurred that the lower TCA upper limits would permit them to transit above the TCA without the use of oxygen equipment.

The Scott Air Force Base (AFB) operations chief expressed concern that the airspace beyond 27 miles at 5,000 feet and below is used by the Scott Radar Approach Control to support military missions in Scott's terminal area. Further, control of a portion of that airspace is routinely assumed by the St. Louis Terminal Radar Approach Control Facility (TRACON) whenever Runways 30 left and right at Lambert-St. Louis International Airport have extended downwind legs. Because of the situation, the St. Louis TRACON and Scott AFB have negotiated a tentative agreement that will accommodate the TCA airspace changes that concern Scott AFB. The current letter of agreement between St. Louis TRACON and Scott AFB will be amended to satisfy Scott AFB operational concerns.

The Missouri Pilots Association and AOPA recommended that the FAA adopt a flyway and planning chart as a useful tool for conducting VFR operations in the St. Louis TCA area.

The FAA is currently developing a VFR flyway and planning chart to aid

pilot operations in the St. Louis TCA area.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the St. Louis TCA located at the Lambert-St. Louis International Airport, St. Louis, MO. The increased volume of traffic cannot be accommodated by the present configuration of TCA airspace. Aircraft are routinely vectored beyond the boundaries of the current TCA into airspace where ATC services are not provided to all aircraft. This alteration of the TCA better serves the users, as well as the FAA. The FAA's responsibility is to efficiently manage the airspace surrounding the St. Louis area, while providing a level of safety expected by the flying public. This responsibility is met by modifying the TCA to accommodate the volume of traffic experienced today and projected for the future.

In the proposed rulemaking, Area F was described as that airspace extending upward from 5,000 feet MSL up to and including 8,000 feet MSL. Area F is now described as that airspace extending upward from 4,500 feet MSL to 8,000 feet MSL. The airspace segment with a lower limit of 5,000 feet MSL upper limit of 8,000 feet MSL, which was separated from the TCA extensions, now becomes Area G.

Area G covers the same airspace as in the original design except for the addition of the extensions to protect departure/arrival traffic. That segment with the lower limit of 4,500 feet MSL and an upper limit of 8,000 feet MSL is now called Area F.

The landmarks selected to identify the St. Louis TCA boundaries were identified by the users committee and are considered by the FAA as satisfactory.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this action. This summary and the full evaluation quantify costs and benefits, to the extent practicable, to the private sector, consumers, Federal, State and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in Executive Order 12291. Therefore, a full regulatory analysis has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes this rule. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. The complete regulatory evaluation is contained in the docket.

Costs

The FAA believes that the rule will impose negligible costs on the agency and the aviation community. The basis of this assessment for each of these groups is discussed below.

The rule will not impose any administrative costs on the FAA. Current personnel and equipment resources already in place at the St. Louis TCA will absorb any additional operations workload generated by the rule.

One of the operational rules of a TCA requires pilots to establish two-way radio contact with ATC. The rule could adversely affect aircraft operators who currently fly in areas that would become part of the TCA since they may have to acquire two-way radios. However, aircraft operators who fly under instrument flight rules (IFR) routinely operate inside TCA's and their aircraft are assumed to be already equipped with the necessary avionics equipment. These aircraft primarily consist of large air carriers, business jets, commuters, and air taxis. Thus, operators of these aircraft will not have to acquire additional equipment as a result of this rule. The FAA does not believe that operators who fly aircraft under VFR, usually small general aviation (GA) airplanes, will have to acquire two-way radios. The FAA believes affected GA aircraft are already equipped with two-way radios and therefore, will not incur such a cost.

General aviation operators who do not routinely fly inside the TCA could be potentially inconvenienced by having to participate (contact ATC and follow TCA operational rules) in the TCA, but only if they routinely operate in the areas of TCA expansion. However, the FAA believes that GA operators will not be significantly inconvenienced because these GA operators are assumed to be already participating in the TCA to the degree that they at least monitor traffic advisories. Affected GA aircraft operators also could potentially face circumnavigation costs. Still, the FAA does not believe that these costs would be significant since the TCA will be expanding only 5 nautical miles and GA operators will still be able to fly above or below the TCA.

Antique airplanes, sports aviation aircraft (gliders, balloonists, parachutists), helicopters, and aircraft flown by student pilots are prevalent within a 30-nautical mile radius of Lambert-St. Louis International Airport and could potentially incur circumnavigation costs. This is predominantly true for those currently operating in the areas of TCA expansion of Area F. However, as long as these operators fly below Area F's floor at 4,500 feet MSL, the rule would not affect them. If they wish to fly above 4,500 feet MSL, they will have to circumnavigate 5 nautical miles to remain clear of the TCA. Because of this relative short distance, the FAA estimates that the final rule will have a negligible cost impact on antique and sports aviation operations.

Benefits

The rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. There would be a lowered likelihood of midair collisions due to the increased positive control of airspace around the St. Louis TCA.

Because of the proactive nature of the changes, the potential safety benefits are difficult to quantify. Proactive means that the FAA acts to prevent a safety problem from occurring when the earliest symptoms appear. In this case, the symptoms are the increased complexity (or density) of aircraft operations within the present configuration of the St. Louis TCA. When the FAA last modified the St. Louis TCA in 1980, annual operations were 337,000 and passenger enplanements were 5.4 million. Since that time, annual operations have increased 31 percent to 443,000 and are projected to reach 508,000 by the year 2000. Similarly, annual passenger enplanements have increased 91 percent to 10.3 million and are projected to reach 15.8 million by the year 2000.

The number of operations at GA airports surrounding St. Louis is increasing as well. Currently, there are 10 public airports, 2 public heliports, 8

private airports, and at least 19 private heliports within the lateral boundaries of the TCA. The FAA estimates that the combined total annual operations of these air facilities were approximately 630,000 in 1990 and are expected to rise to 772,000 by the year 2000. Only a fraction of these GA operations ever enter the St. Louis TCA. Nevertheless, the FAA believes that the increase in GA operations outside the TCA translates into an increase in GA operations within the TCA.

The current level of operations has congested the airspace to the point that ATC must now routinely vector aircraft beyond the boundaries of the existing TCA into airspace where positive control is not provided to all aircraft. ATC has maintained safety in and around the existing St. Louis TCA through measures such as special aircraft landing procedures and metering the traffic flow. Although these measures have been successful thus far, as evidenced by a record of no midair collisions within the St. Louis TCA, the FAA believes that they may no longer be adequate.

Without document evidence of midair collisions in the St. Louis TCA, estimating the probability of such collisions in the absence of the rule cannot be determined with a reliable degree of certainty. Despite this difficulty, the FAA believes that there is an emerging safety problem, though not yet critical. Without this rule, the FAA believes that aviation safety in the St. Louis area would be reduced significantly in the future.

Another benefit of the final rule would be the repositioning of many of the TCA boundaries along surface features such as highways and rivers. This will enhance the visual means for TCA boundary identification. The rule will also release TCA airspace by raising the floor of a section of the "core" to 1,700 feet MSL (Area B). This will provide more airspace to users who operate under VFR conditions, especially around the Creve Coeur and Arrowhead Airports.

In view of the estimated negligible costs to some GA operators, coupled with benefits in the forms of enhanced aviation safety and increased airspace for GA aircraft operators, the FAA believes that this rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities that the rule could affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. The rule would only potentially affect those unscheduled air taxi operators who are not able to operate under IFR conditions. The FAA believes that all of the potentially affected unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators regularly use airports where the FAA has established radar approach control services. Therefore, the FAA believes that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States nor have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not "major" under Executive Order 12291; and (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact, either positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403(b) [Amended].

2. Section 71.403(b) is amended to read as follows:

St. Louis, MO [Revised]

Primary Airport, Lambert-St. Louis International Airport (lat. 38°44'52" N., long. 90°21'36" W.).

Boundaries

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6-mile radius of the Lambert-St. Louis International Airport, excluding that airspace south of Interstate 70 and West of Interstate 270; and west of the west bank of the Missouri River from Interstate 70 clockwise to the point where the river intersects with the 6-mile arc, directly north of the Lambert-St. Louis International Airport.

Area B. That airspace extending upward from 1,700 feet MSL to and including 8,000 feet MSL bounded by Interstate 270 on the east, Interstate 70 on the north, the 180° radial of the St. Louis VOR on the west, and the 6-mile arc on the south.

Area C. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile radius arc of the Lambert-St. Louis International Airport, excluding the area south of Interstate 64 (formerly Highway 40).

Area D. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace bounded by Interstate 55/70 on the north and the east bank of the Mississippi River from Interstate 55/70 to the 15-mile arc on the south.

Area E. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL that was excluded from Area D.

Area F. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL in 3 areas: (1) with 8 miles each side of the Lambert-St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 15-mile arc to the 30-mile radius arc of the Lambert-St. Louis International Airport; and (2) within 8 miles each side of the Lambert-St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 15-mile radius arc to the 30-

mile radius arc of the Lambert-St. Louis International Airport.

Area G. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL within a 20-mile radius arc of the Lambert-St. Louis International Airport, excluding that airspace included in Area F.

Issued in Washington, DC, on April 26, 1991.

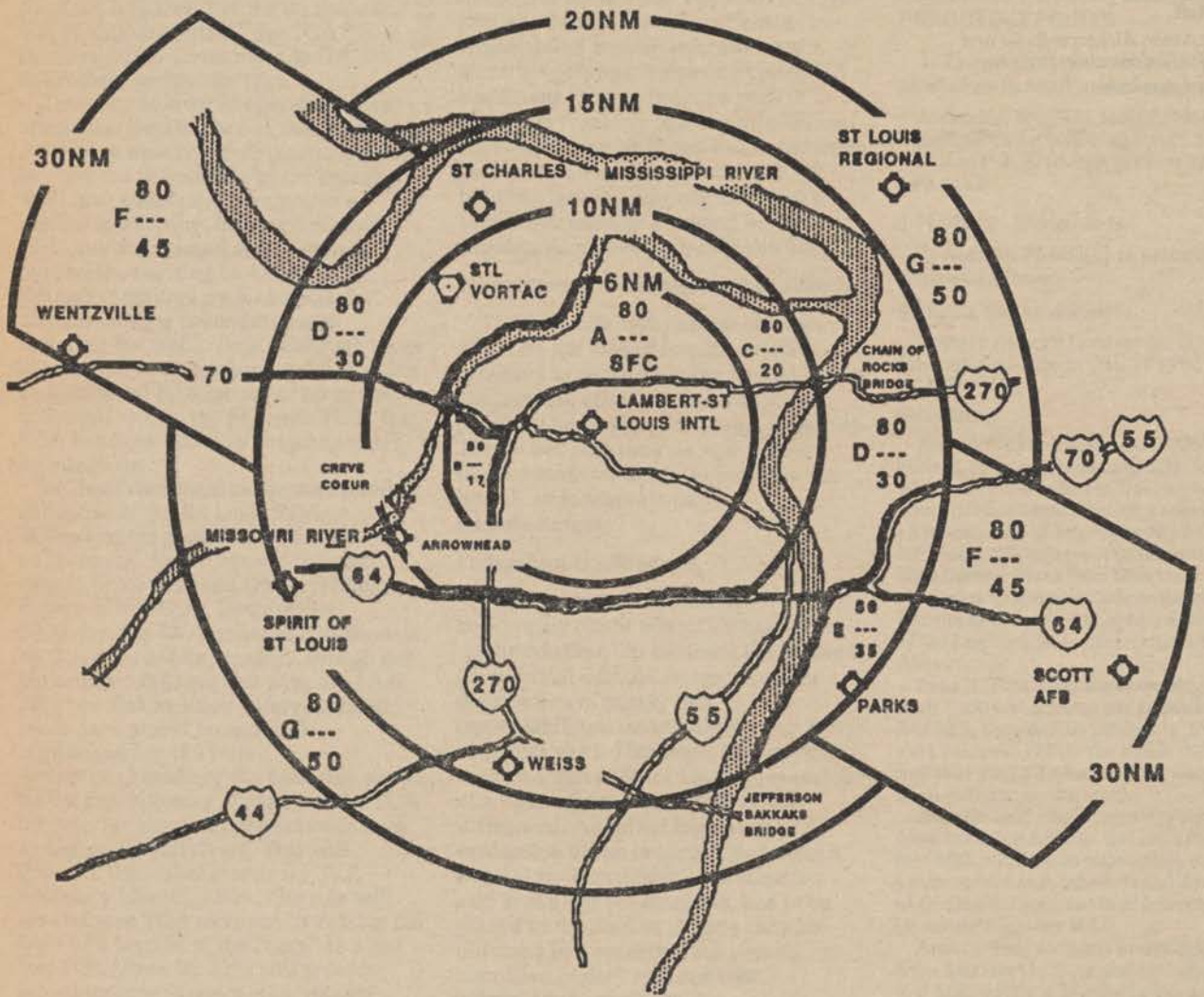
Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

ST LOUIS, MISSOURI
TERMINAL CONTROL AREA
LAMBERT-ST LOUIS INTERNATIONAL AIRPORT
FIELD ELEVATION - 605 FEET

(not to be used for navigation)



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CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Last List April 29, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

H.J. Res. 218/Pub. L. 102-36

To designate the week beginning April 21, 1991, and the week beginning April 19, 1992, each as "National Organ and Tissue Donor Awareness Week". (Apr. 26, 1991;105 Stat. 182; 1 page) Price: $1.00

S.J. Res. 64/Pub. L. 102-37

To authorize the President to proclaim the last Friday of April 1991, as "National Arbor Day". (Apr. 26, 1991; 105 Stat. 183; 1 page) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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May 24	June 10	June 24	July 8	July 23	August 22
May 28	June 12	June 27	July 12	July 29	August 26
May 29	June 13	June 28	July 15	July 29	August 27
May 30	June 14	July 1	July 15	July 29	August 28
May 31	June 17	July 1	July 15	July 30	August 29

Public Laws

102d Congress, 1st Session, 1991

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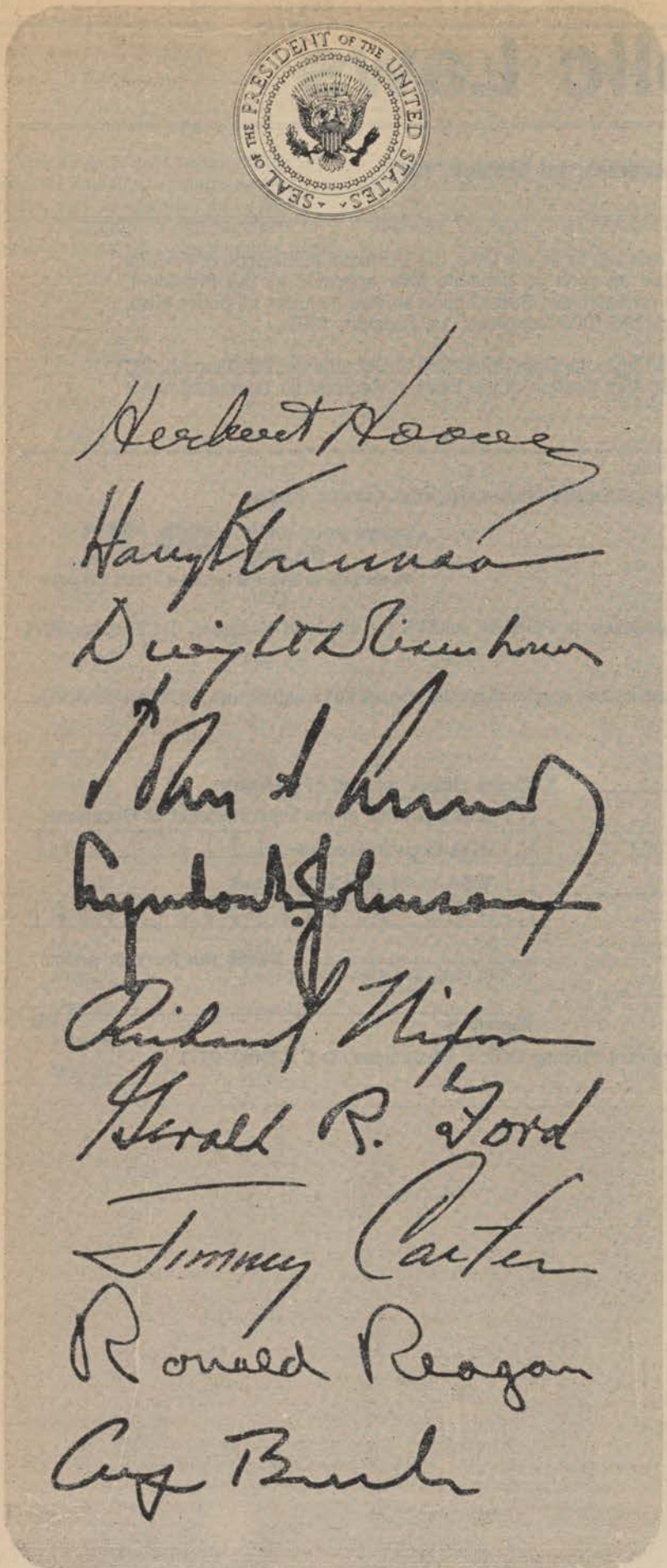

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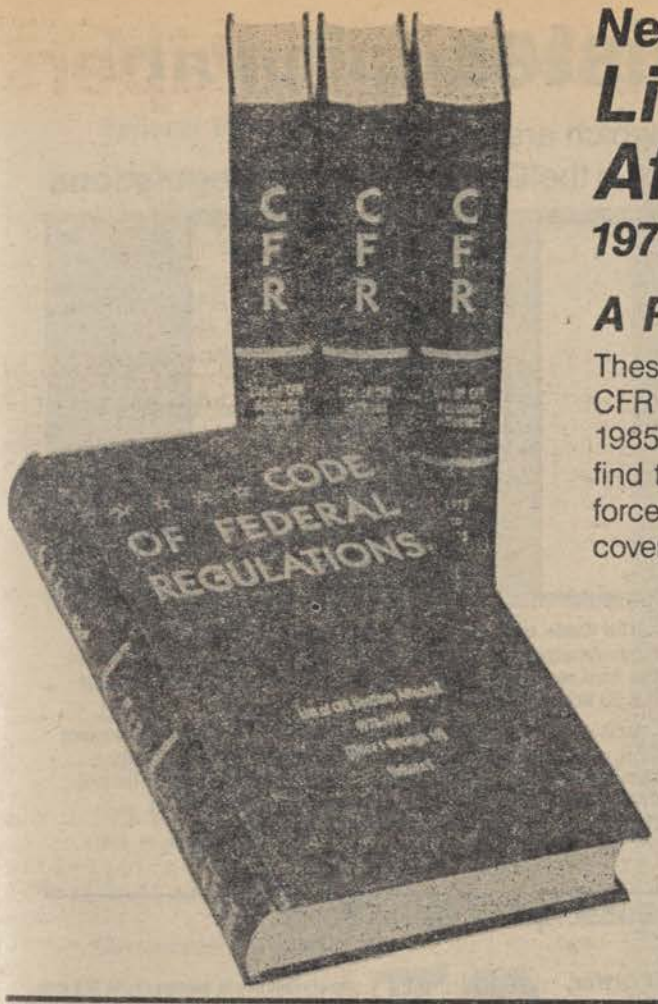

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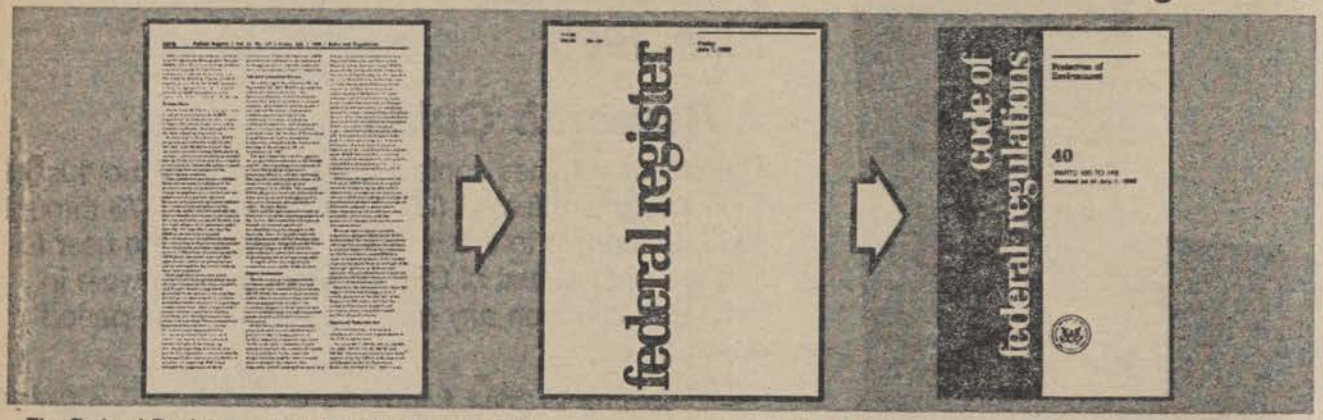

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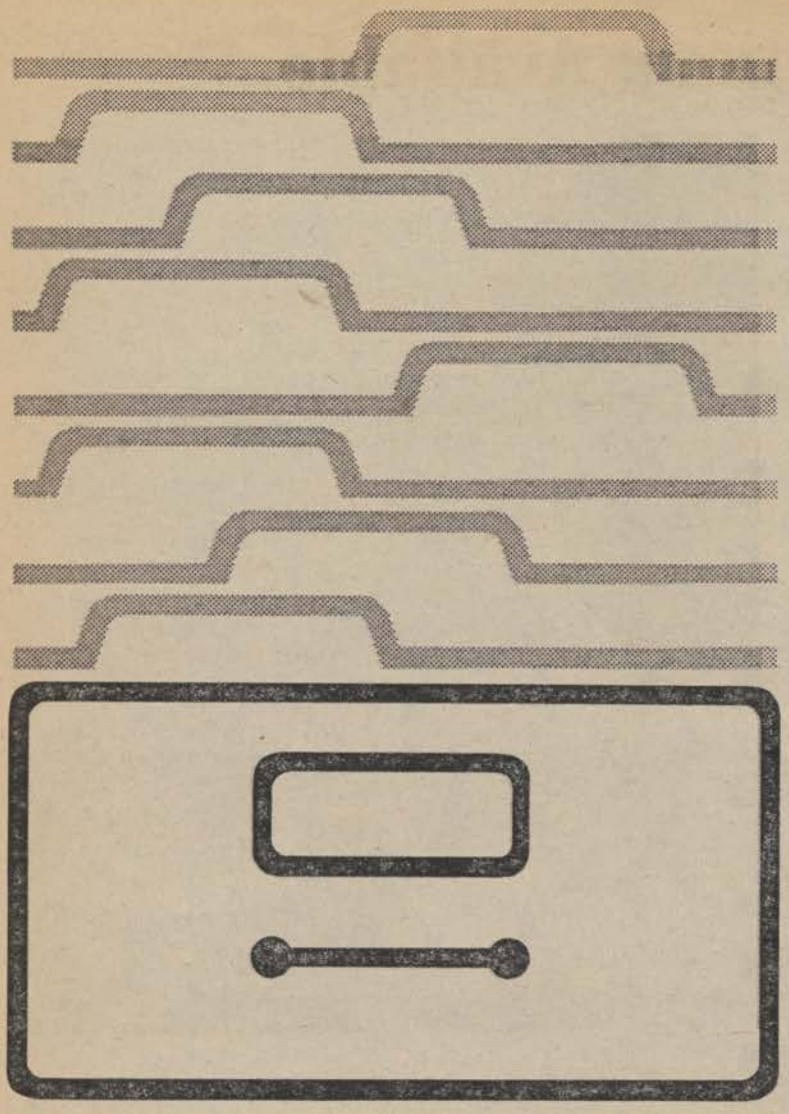

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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